

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2830, AS REPORTED
OFFERED BY M____.

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Pension Protection Act of 2005”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title and table of contents.

**TITLE I—INTEREST RATE FOR 2006 AND 2007 FUNDING
REQUIREMENTS**

Sec. 101. Interest rate for 2006 and 2007 funding requirements.

Sec. 102. Government Accountability Office pension funding report.

TITLE II—PROTECTING PENSION BENEFITS IN BANKRUPTCY

Sec. 201. Promotion of reasonable alternatives to plan termination.

Sec. 202. Election by employer to restore plan upon emergence from bankruptcy.

Sec. 203. Date on which lien for missed contributions is deemed perfected.

**TITLE III—PROTECTION OF PENSION PLANS FOR AIRLINE
EMPLOYEES**

Sec. 301. Special funding rules for plans maintained by commercial airlines that are amended to cease future benefit accruals.

Sec. 302. Recognition of legally mandated early retirement ages in determining amount of guaranteed benefits.

TITLE IV—FAIRNESS FOR RANK AND FILE EMPLOYEES

Sec. 401. Treatment of nonqualified deferred compensation plans when employer defined benefit plan in at-risk status.

Sec. 402. Nonqualified deferred compensation reduced by percentage of underfunded plan upon bankruptcy of employer.



Sec. 403. Termination fairness standard for nonqualified deferred compensation plans in connection with pension plan terminations based on bankruptcy reorganization.

TITLE V—FUNDING AND DEDUCTION RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS

Subtitle A—Funding Rules

PART I—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

- Sec. 501. Funding rules for multiemployer defined benefit plans.
Sec. 502. Additional funding rules for multiemployer plans in endangered or critical status.
Sec. 503. Measures to forestall insolvency of multiemployer plans.
Sec. 504. Special rule for certain benefits funded under an agreement approved by the Pension Benefit Guaranty Corporation.
Sec. 505. Withdrawal liability reforms.

PART II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

- Sec. 511. Funding rules for multiemployer defined benefit plans.
Sec. 512. Additional funding rules for multiemployer plans in endangered or critical status.

PART III—SUNSET OF FUNDING RULES

- Sec. 516. Sunset of funding rules.

Subtitle B—Deduction and Related Provisions

- Sec. 521. Deduction limits for multiemployer plans.
Sec. 522. Transfer of excess pension assets to multiemployer health plan.

TITLE VI—ENHANCED RETIREMENT SAVINGS AND DEFINED CONTRIBUTION PLANS

- Sec. 701. AmeriSave matching credit.
Sec. 702. Manner in which AmeriSave matching credit allowed.
Sec. 703. Increasing participation through automatic contribution arrangements.
Sec. 704. Preemption of State laws precluding automatic enrollment or automatic rollovers.
Sec. 705. Fiduciary standards relating to automatic or default investments.
Sec. 706. Penalty-free withdrawals from retirement plans for individuals called to active duty for at least 179 days.
Sec. 707. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
Sec. 708. Combat zone compensation taken into account for purposes of determining limitation and deductibility of contributions to individual retirement plans.
Sec. 709. Direct payment of tax refunds to individual retirement plans.
Sec. 710. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
Sec. 711. IRA eligibility for the disabled.



TITLE VII—PROVISIONS TO ENHANCE HEALTH CARE
AFFORDABILITY

Sec. 801. Treatment of annuity and life insurance contracts with a long-term care insurance feature.

Sec. 802. Disposition of unused health benefits in cafeteria plans and flexible spending arrangements.

Sec. 803. Distributions from governmental retirement plans for health and long-term care insurance for public safety officers.

TITLE VIII—REDUCTION IN BENEFIT OF RATE REDUCTION FOR
FAMILIES WITH INCOMES OVER \$1,000,000

Sec. 901. Reduction in benefit of rate reduction for families with incomes over \$1,000,000.

1 TITLE I—INTEREST RATE FOR
2 2006 AND 2007 FUNDING RE-
3 REQUIREMENTS

4 SEC. 101. INTEREST RATE FOR 2006 AND 2007 FUNDING RE-
5 REQUIREMENTS.

6 (a) AMENDMENTS TO ERISA.—

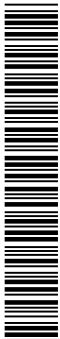
7 (1) IN GENERAL.—Subclause (II) of section
8 302(b)(5)(B)(ii) of the Employee Retirement Income
9 Security Act of 1974 (29 U.S.C.
10 1082(b)(5)(B)(ii)(II)) is amended—

11 (A) by striking “January 1, 2006” and in-
12 serting “January 1, 2008”, and

13 (B) by striking “AND 2005” in the heading
14 and inserting “, 2005, 2006, AND 2007”.

15 (2) CURRENT LIABILITY.—Subclause (IV) of
16 section 302(d)(7)(C)(i) of such Act (29 U.S.C.
17 1082(d)(7)(C)(i)(IV)) is amended—

18 (A) by striking “or 2005” and inserting “,
19 2005, 2006, or 2007”, and



1 (B) by striking “AND 2005” in the heading
2 and inserting “, 2005, 2006, AND 2007”.

3 (3) RISK-BASED PREMIUMS.—Section
4 4006(a)(3)(E)(iii)(V) of such Act (29 U.S.C.
5 1306(a)(3)(E)(iii)(V)) is amended by striking “Jan-
6 uary 1, 2006” and inserting “January 1, 2008”.

7 (b) AMENDMENTS TO THE INTERNAL REVENUE
8 CODE OF 1986.—

9 (1) IN GENERAL.—Subclause (II) of section
10 412(b)(5)(B)(ii) of the Internal Revenue Code of
11 1986 is amended—

12 (A) by striking “January 1, 2006” and in-
13 serting “January 1, 2008”, and

14 (B) by striking “AND 2005” in the heading
15 and inserting “, 2005, 2006, AND 2007”.

16 (2) CURRENT LIABILITY.—Subclause (IV) of
17 section 412(l)(7)(C)(i) of such Code is amended—

18 (A) by striking “or 2005” and inserting “,
19 2005, 2006, or 2007”, and

20 (B) by striking “AND 2005” in the heading
21 and inserting “, 2005, 2006, AND 2007”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to plan years beginning after De-
24 cember 31, 2005.



1 **SEC. 102. GOVERNMENT ACCOUNTABILITY OFFICE PEN-**
2 **SION FUNDING REPORT.**

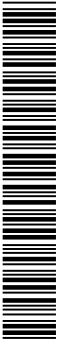
3 (a) IN GENERAL.—The Comptroller General of the
4 Government Accountability Office shall transmit to the
5 Congress a pension funding report not later than one year
6 after the date of the enactment of this Act.

7 (b) REPORT CONTENT.—The pension funding report
8 required under subsection (a) shall include an analysis of
9 the feasibility, advantages, and disadvantages of—

10 (1) requiring an employee pension benefit plan
11 to insure a portion of such plan's total investments;

12 (2) requiring an employee pension benefit plan
13 to adhere to uniform solvency standards set by the
14 Pension Benefit Guaranty Corporation, which are
15 similar to those applied on a State level in the insur-
16 ance industry; and

17 (3) amortizing a single-employer defined benefit
18 pension plan's shortfall amortization base (referred
19 to in section 303(c)(3) of the Employee Retirement
20 Income Security Act of 1974 (as amended by this
21 Act)) over various periods of not more than 7 years.

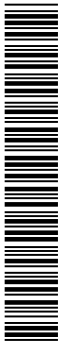


1 **TITLE II—PROTECTING PENSION**
2 **BENEFITS IN BANKRUPTCY**

3 **SEC. 201. PROMOTION OF REASONABLE ALTERNATIVES TO**
4 **PLAN TERMINATION.**

5 (a) ADDITIONAL REQUIREMENTS FOR DISTRESS
6 TERMINATION.—Section 4041(c)(2)(B) of the Employee
7 Retirement Income Security Act of 1974 (29 U.S.C.
8 1341(c)(2)(B)) is amended by adding at the end the fol-
9 lowing:

10 “(iv) ADDITIONAL REQUIREMENTS.—
11 Notwithstanding any other provision of
12 this section, unless the corporation or the
13 court, in the case of a distress termination
14 pursuant to clause (ii), has determined
15 that reasonable efforts to consider avail-
16 able alternatives to termination (including,
17 but not limited to, alternatives described in
18 section 4042(c)(3)) have been undertaken
19 by such person (and, in the case of a plan
20 maintained pursuant to a collective bar-
21 gaining agreement, have been undertaken
22 by the bargaining parties in good faith
23 bargaining), the plan may not be termi-
24 nated. A participant or beneficiary of the
25 plan or an employee organization rep-



1 resenting such participants or beneficiaries
2 may bring an action in the appropriate
3 court to challenge such determination by
4 the corporation and seek equitable relief or
5 must be afforded an opportunity to be
6 heard by the appropriate court if a court
7 is making such determination.”.

8 (b) EFFORTS BY THE CORPORATION AT CONSULTA-
9 TION WITH PARTIES.—Section 4042(c) of such Act (29
10 U.S.C. 1342(c)) is amended—

11 (1) by inserting “(1)” after “(c)”;

12 (2) by striking “If the corporation and the plan
13 administrator agree” and all that follows through
14 “in subsection (d)(3).”;

15 (3) by redesignating paragraph (3) as para-
16 graph (2); and

17 (4) by adding at the end the following new
18 paragraph:

19 “(3)(A) The corporation may not institute pro-
20 ceedings under this section to terminat such plan unless
21 the corporation demonstrates that it has made all reason-
22 able efforts to negoitate with the plan sponsor, the plan
23 participants, and (in the case of a plan maintained pursu-
24 ant to a collective bargaining agreement) the employee or-
25 ganization representing plan participants for purposes of



1 collective bargaining to determine whether there are any
2 reasonable available alternatives to termination (including,
3 but not limited to, alternatives described subparagraph
4 (B).

5 “(B) The reasonable alternatives to termination re-
6 ferred to in subparagraph (A) consist of measures which
7 are in the best interest of plan participants and which in-
8 clude (but are not limited to) the following:

9 “(i) Financing or loans sought by any member
10 of the plan sponsor’s controlled group, with or with-
11 out assistance from the corporation, in order to ob-
12 tain plan financing, including back-up guarantees to
13 any such financing which the corporation is hereby
14 authorized to provide for such purpose.

15 “(ii) New plan structures agreed to by the par-
16 ties, such as transfer of plan liabilities to multiem-
17 ployer plans, new benefit formulas for new hires or
18 non-vested participants, or other plan restructuring
19 alternatives agreed to by the parties.

20 “(iii) Reinsurance which the corporation is
21 hereby authorized to obtain for the plan.

22 “(iv) An agreement by the parties authorizing
23 alternative funding schedules, approved by the cor-
24 poration, which shall thereafter be treated as meet-



1 ing the minimum funding requirements for the plan
2 under part 3 of subtitle B of title I.

3 “(v) Purchase by the plan sponsor of an annu-
4 ity contract to cover liabilities of the plan, which the
5 corporation is hereby authorized to guarantee as
6 necessary to secure such a contract.”.

7 (c) REQUIRED COURT DETERMINATIONS.—Section
8 4042(c) of such Act is amended by adding at the end the
9 following new paragraph:

10 “(4)(A) A plan may not be terminated under this sec-
11 tion unless the court, in the proceedings described in para-
12 graph (1), finds that—

13 “(i) reasonable efforts to consider available al-
14 ternatives to termination (including, but not limited
15 to, alternatives described in paragraph (3)) have
16 been undertaken by the plan sponsor (and, in the
17 case of a plan maintained pursuant to a collective
18 bargaining agreement, have been undertaken by the
19 bargaining parties in good faith bargaining),

20 “(ii) without such termination, a contributing
21 sponsor of the plan (or a member of such a spon-
22 sor’s controlled group) would be unable to pay its
23 debts when due and—

24 “(I) if such proceedings include pro-
25 ceedings in which reorganization of such spon-



1 sor or member is sought in a case under title
2 11, United States Code, or under any similar
3 law of a State or political subdivision of a
4 State, such sponsor or member could not be
5 discharged in such proceedings, or

6 “(II) in any other case, such sponsor or
7 member would be unable to continue in busi-
8 ness, and

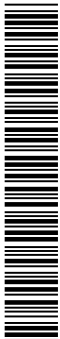
9 “(iii) all otherwise applicable requirements for
10 termination under this section are met.

11 “(B) Any party consisting of the plan sponsor, a plan
12 participant, or (in the case of a plan maintained pursuant
13 to a collective bargaining agreement) the employee organi-
14 zation representing plan participants for purposes of col-
15 lective bargaining may intervene in the proceedings de-
16 scribed in paragraph (1) to challenge whether all applica-
17 ble requirements for termination under this section are
18 met.”.

19 (d) NOTICE.—

20 (1) Section 4041(a) of such Act (29 U.S.C.
21 1341(a) is amended by adding at the end the fol-
22 lowing new paragraph:

23 “(4) NOTICE OF RIGHT TO CHALLENGE.—To-
24 gether with the notice of intent to terminate, the
25 plan administrator shall provide to each participant



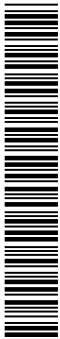
1 and beneficiary a written notice of the right of par-
2 ticipants and beneficiaries to challenge determina-
3 tions under this section, written in a manner likely
4 to be understood by the participant or beneficiary.”.

5 (2) Section 4042(a) of such Act (29 U.S.C.
6 1342(a)) is amended by adding at the end the fol-
7 lowing new sentence: “Prior to commencing pro-
8 ceedings under this section with respect to any plan,
9 the corporation shall provide notice to plan partici-
10 pants and beneficiaries of the right to challenge de-
11 terminations under this section, written in a manner
12 likely to be understood by the participant or bene-
13 ficiary.”.

14 (e) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by
16 this section shall apply with respect to any plans un-
17 dergoing termination proceedings pursuant to sec-
18 tion 4041 or 4042 of the Employee Retirement In-
19 come Security Act of 1974 which are pending on or
20 after the date of the enactment of this Act.

21 (2) TRANSITIONAL RULE FOR INVOLUNTARY
22 TERMINATIONS.—In any case in which, during the
23 period beginning December 1, 2004, and ending
24 with the date of the enactment of this Act, the Pen-
25 sion Benefit Guaranty Corporation has commenced



1 termination proceedings under section 4042 of the
2 Employee Retirement Income Security Act of 1974
3 (including the execution of any termination or trust
4 agreement under such section)—

5 (A) the Corporation or other entity serving
6 as trustee shall, effective as of the date of the
7 enactment of this Act—

8 (i) cease any activities undertaken to
9 terminate the plan, and

10 (ii) take such actions as may be nec-
11 essary to restore the plan to its status im-
12 mediately prior to the commencement of
13 such proceedings or the execution of such
14 agreement, and

15 (B) the procedures and requirements of
16 section 4042 of the Employee Retirement In-
17 come Security Act of 1974 (as amended by this
18 section) shall apply to any further such pro-
19 ceedings undertaken after the date of the enact-
20 ment of this Act.

21 **SEC. 202. ELECTION BY EMPLOYER TO RESTORE PLAN**
22 **UPON EMERGENCE FROM BANKRUPTCY.**

23 (a) IN GENERAL.—Section 4047 of the Employee Re-
24 tirement Income Security Act of 1974 (29 U.S.C. 1347)
25 is amended—



1 (1) by inserting “(a)” before “Whenever”, and
2 (2) by adding at the end the following new sub-
3 section:

4 “(b) Within 3 years after the date on which a plan
5 sponsor of a plan terminated under section
6 4041(c)(2)(B)(ii) or under section 4042 with respect to
7 a reorganization case under title 11 of the United States
8 Code, or under any similar law of a State or a political
9 subdivision of a State (or with respect to a case described
10 in section 4041(c)(2)(B)(i) which has been converted to
11 such a reorganization case), is discharged in such case (or
12 the case is otherwise dismissed), the plan sponsor may
13 elect to restore the plan to its pretermination status. Rules
14 similar to the rules of subsection (a) shall apply with re-
15 spect to any election made under this subsection. ”.

16 (b) PREMIUM RATE FOR TERMINATED SINGLE-EM-
17 PLOYER PLANS WHICH ARE NOT RESTORED.—Subsection
18 (a) of section 4006 of the Employee Retirement Income
19 Security Act of 1974 (29 U.S.C. 1306) is amended by
20 adding at the end the following:

21 “(7) PREMIUM RATE FOR CERTAIN TERMINATED
22 SINGLE-EMPLOYER PLANS.—

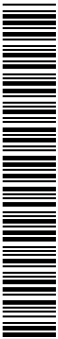
23 “(A) IN GENERAL.—In any case in which a
24 plan sponsor of a plan terminated under
25 4041(c)(2)(B)(ii) or under section 4042 with respect



1 to a reorganization case under title 11 of the United
2 States Code, or under any similar law of a State or
3 a political subdivision of a State, (or with respect to
4 a case described in section 4041(c)(2)(B)(i) which
5 has been converted to such a reorganization case) is
6 discharged in such case (or the case is otherwise dis-
7 missed), unless there is in effect an election under
8 section 4047(b) in connection with such case after
9 such discharge (or dismissal), there shall be payable
10 to the corporation, with respect to each applicable
11 12-month period before the end of the 3-year period
12 after such discharge (or dismissal) for which such
13 election is not in effect, a premium at a rate equal
14 to \$1,250 multiplied by the number of individuals
15 who were participants in the plan immediately before
16 the termination date. Such premium shall be in ad-
17 dition to any other premium under this section.

18 “(B) APPLICABLE 12-MONTH PERIOD.—For
19 purposes of subparagraph (A), the term ‘applicable
20 12-month period’ means—

21 “(i) the 12-month period beginning with
22 the first month following the month in which
23 the termination date occurs, and



1 “(ii) each of the first two 12-month peri-
2 ods immediately following the period described
3 in subclause (I).

4 “(C) COORDINATION WITH SECTION 4007.—

5 “(i) Notwithstanding section 4007—

6 “(I) premiums under this paragraph
7 shall be due within 30 days after the be-
8 ginning of any applicable 12-month period,
9 and

10 “(II) the designated payor shall be the
11 person who is the contributing sponsor as
12 of immediately before the termination date.

13 “(ii) The fifth sentence of section 4007(a)
14 shall not apply in connection with premiums de-
15 termined under this paragraph.

16 “(D) USE OF FUNDS.—All amounts paid to the cor-
17 poration under subparagraph (A) shall be deposited in the
18 appropriate fund established under section 4005(a).
19 Amounts deposited under the preceding sentence shall
20 only be available to the corporation for payment of non-
21 forfeitable benefits under the plan to participants of the
22 terminated plan in excess of the corporation’s guarantee
23 under section 4022.”.

24 “(c) EFFECTIVE DATE.—The amendments made by
25 this section shall apply with respect to plan terminations



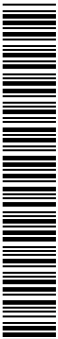
1 with respect to which proceedings are instituted, or are
2 pending, on or after November 9, 2005.

3 **SEC. 203. DATE ON WHICH LIEN FOR MISSED CONTRIBU-**
4 **TIONS IS DEEMED PERFECTED.**

5 (a) IN GENERAL.—Section 4041 of the Employee Re-
6 tirement Income Security Act of 1974 is amended by add-
7 ing at the end the following new subsection:

8 “(f) In the case of the commencement of any reorga-
9 nization case under title 11 of the United States Code,
10 or under any similar law of a State or a political subdivi-
11 sion of a State, (a case described in section
12 4041(c)(2)(B)(i)) by or against a plan sponsor which has
13 been converted to such a reorganization case), any lien or
14 other security of a plan in such plan sponsor for missed
15 contributions to the plan shall be treated as being per-
16 fected as of the earlier of the date of the commencement
17 of such case or the date such security or lien is filed.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply with respect to plan terminations
20 with respect to which proceedings are instituted, or are
21 pending, on or after November 9, 2005.



1 **TITLE III—PROTECTION OF PEN-**
2 **SION PLANS FOR AIRLINE EM-**
3 **PLOYEES**

4 **SEC. 301. SPECIAL FUNDING RULES FOR PLANS MAIN-**
5 **TAINED BY COMMERCIAL AIRLINES THAT**
6 **ARE AMENDED TO CEASE FUTURE BENEFIT**
7 **ACCRUALS.**

8 (a) IN GENERAL.—If an election is made to have this
9 section apply to an eligible plan—

10 (1) in the case of any applicable plan year be-
11 ginning before January 1, 2007, the plan shall not
12 have an accumulated funding deficiency for purposes
13 of section 302 of the Employee Retirement Income
14 Security Act of 1974 and sections 412 and 4971 of
15 the Internal Revenue Code of 1986 if contributions
16 to the plan for the plan year are not less than the
17 minimum required contribution determined under
18 subsection (d) for the plan for the plan year, and

19 (2) in the case of any applicable plan year be-
20 ginning on or after January 1, 2007, the minimum
21 required contribution determined under sections 303
22 of such Act and 430 of such Code shall, for purposes
23 of sections 302 and 303 of such Act and sections
24 412, 430, and 4971 of such Code, be equal to the



1 minimum required contribution determined under
2 subsection (d) for the plan for the plan year.

3 (b) ELIGIBLE PLAN.—For purposes of this section—

4 (1) IN GENERAL.—The term “eligible plan”
5 means a defined benefit plan (other than a multiem-
6 ployer plan) to which sections 302 of such Act and
7 412 of such Code applies—

8 (A) which is sponsored by an employer—

9 (i) which is a commercial airline pas-
10 senger airline, or

11 (ii) the principal business of which is
12 providing catering services to a commercial
13 passenger airline, and

14 (B) with respect to which the requirements
15 of paragraphs (2) and (3) are met.

16 (2) ACCRUAL RESTRICTIONS.—

17 (A) IN GENERAL.—The requirements of
18 this paragraph are met if, effective as of the
19 first day of the first applicable plan year and at
20 all times thereafter while an election under this
21 section is in effect, the plan provides that—

22 (i) the accrued benefit, any death or
23 disability benefit, and any social security
24 supplement described in the last sentence
25 of section 411(a)(9) of such Code and sec-



1 tion 204(b)(1)(G) of such Act, of each par-
2 ticipant are frozen at the amount of such
3 benefit or supplement immediately before
4 such first day, and

5 (ii) all other benefits under the plan
6 are eliminated,

7 but only to the extent the freezing or elimi-
8 nation of such benefits would have been per-
9 mitted under section 411(d)(6) of such Code
10 and section 204(g) of such Act if they had been
11 implemented by a plan amendment adopted im-
12 mediately before such first day.

13 (B) INCREASES IN SECTION 415 LIMITS
14 DISREGARDED.—If a plan provides that an ac-
15 crued benefit of a participant which has been
16 subject to any limitation under section 415 of
17 such Code will be increased if such limitation is
18 increased, the plan shall not be treated as meet-
19 ing the requirements of this paragraph unless,
20 effective as of the first day of the first applica-
21 ble plan year and at all times thereafter while
22 an election under this section is in effect, the
23 plan provides that any such increase shall not
24 take effect. A plan shall not fail to meet the re-
25 quirements of section 411(d)(6) of such Code



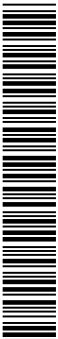
1 and section 204(g) of such Act solely because
2 the plan is amended to meet the requirements
3 of this subparagraph.

4 (3) RESTRICTION ON APPLICABLE BENEFIT IN-
5 CREASES.—

6 (A) IN GENERAL.—The requirements of
7 this paragraph are met if no applicable benefit
8 increase takes effect at any time during the pe-
9 riod beginning on July 26, 2005, and ending on
10 the day before the first day of the first applica-
11 ble plan year.

12 (B) APPLICABLE BENEFIT INCREASE.—
13 For purposes of this paragraph, the term “ap-
14 plicable benefit increase” means, with respect to
15 any plan year, any increase in liabilities of the
16 plan by plan amendment (or otherwise provided
17 in regulations provided by the Secretary) which,
18 but for this paragraph, would occur during the
19 plan year by reason of—

- 20 (i) any increase in benefits,
21 (ii) any change in the accrual of bene-
22 fits, or
23 (iii) any change in the rate at which
24 benefits become nonforfeitable under the
25 plan.



1 (4) EXCEPTION FOR IMPUTED DISABILITY
2 SERVICE.—Paragraphs (2) and (3) shall not apply
3 to any accrual or increase with respect to imputed
4 service provided to a participant during any period
5 of the participant's disability occurring on or after
6 the effective date of the plan amendment providing
7 the restrictions under paragraph (2) if the
8 participant—

9 (A) was receiving disability benefits as of
10 such date, or

11 (B) was receiving sick pay and subse-
12 quently determined to be eligible for disability
13 benefits as of such date.

14 (c) ELECTIONS AND RELATED TERMS.—

15 (1) IN GENERAL.—A plan sponsor shall make
16 the election under subsection (a) at such time and
17 in such manner as the Secretary of the Treasury
18 may prescribe. Except as provided in subsection
19 (h)(5), such election, once made, may be revoked
20 only with the consent of such Secretary.

21 (2) YEARS FOR WHICH ELECTION MADE.—

22 (A) IN GENERAL.—The plan sponsor may
23 select the first plan year to which the election
24 under subsection (a) applies from among plan
25 years ending after the date of the election. The



1 election shall apply to such plan year and all
2 subsequent years.

3 (B) ELECTION OF NEW PLAN YEAR.—The
4 plan sponsor may specify a new plan year in the
5 election under subsection (a) and the plan year
6 of the plan may be changed to such new plan
7 year without the approval of the Secretary of
8 the Treasury.

9 (3) APPLICABLE PLAN YEAR.—The term “ap-
10 plicable plan year” means each plan year to which
11 the election under subsection (a) applies under para-
12 graph (1).

13 (d) MINIMUM REQUIRED CONTRIBUTION.—

14 (1) IN GENERAL.—In the case of any applicable
15 plan year during the amortization period, the min-
16 imum required contribution shall be the amount nec-
17 essary to amortize the unfunded liability of the plan,
18 determined as of the first day of the plan year, in
19 equal annual installments (until fully amortized)
20 over the remainder of the amortization period. Such
21 amount shall be separately determined for each ap-
22 plicable plan year.

23 (2) YEARS AFTER AMORTIZATION PERIOD.—In
24 the case of any plan year beginning after the end of
25 the amortization period, section 302(a)(2)(A) of



1 such Act and section 412(a)(2)(A) of such Code
2 shall apply to such plan, but any charge or credit in
3 the funding standard account under section 302 of
4 such Act of section 412 of such Code shall be zero.

5 (3) DEFINITIONS.—For purposes of this
6 section—

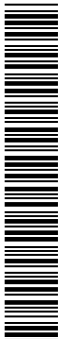
7 (A) UNFUNDED LIABILITY.—The term
8 “unfunded liability” means the unfunded ac-
9 crued liability under the plan, determined under
10 the unit credit funding method.

11 (B) AMORTIZATION PERIOD.—The term
12 “amortization period” means the 20-plan year
13 period beginning with the first applicable plan
14 year.

15 (4) OTHER RULES.—In determining the min-
16 imum required contribution and amortization
17 amount under this subsection—

18 (A) the provisions of section 302(c)(3) of
19 such Act and section 412(c)(3) of such Code, as
20 in effect before the date of enactment of this
21 section, shall apply,

22 (B) the rate of interest under section
23 302(b) of such Act and section 412(b) of such
24 Code, as so in effect, shall be used for all cal-
25 culations requiring an interest rate, and



1 (C) the value of plan assets shall be equal
2 to their fair market value.

3 (5) SPECIAL RULE FOR CERTAIN PLAN SPIN-
4 OFFS.—For purposes of subsection (a), if, with re-
5 spect to any eligible plan to which this subsection
6 applies—

7 (A) any applicable plan year includes the
8 date of the enactment of this Act, and

9 (B) a plan was spun off from the eligible
10 plan during the plan year but before such date
11 of enactment,

12 the minimum required contribution under subsection
13 (a)(1) for the eligible plan for such applicable plan
14 year shall be determined as if the plans were a sin-
15 gle plan for that plan year (based on the full 12-
16 month plan year in effect prior to the spin-off). The
17 employer shall designate the allocation of the min-
18 imum required contribution between such plans for
19 the applicable plan year and direct the appropriate
20 reallocation between the plans of any contributions
21 for the applicable plan year.

22 (e) FUNDING STANDARD ACCOUNT AND
23 PREFUNDING BALANCE.—Any charge or credit in the
24 funding standard account under section 302 of such Act
25 or section 412 of such Code, and any prefunding balance



1 under section 303 of such Act or section 430 of such Code,
2 as of the day before the first day of the first applicable
3 plan year, shall be reduced to zero.

4 (f) AMENDMENTS TO OTHER PROVISIONS.—

5 (1) QUALIFICATION REQUIREMENT.—Section
6 401(a)(36) of the Internal Revenue Code of 1986, as
7 added by section 402 of this Act, is amended by
8 adding at the end the following: “This paragraph
9 shall also apply to any plan during any period dur-
10 ing which an amortization schedule under section
11 403 of the Pension Security and Transparency Act
12 of 2005 is in effect.”

13 (2) PBGC LIABILITY LIMITED.—Section 4022
14 of the Employee Retirement Income Security Act of
15 1974, as amended by this Act, is amended by adding
16 at the end the following new subsection:

17 “(g) SPECIAL RULE FOR PLANS ELECTING CERTAIN
18 FUNDING REQUIREMENTS.—During any period in which
19 an election by a plan under section 301 of the Pension
20 Protection Act of 2005 is in effect, then this section and
21 section 4044(a)(3) shall be applied by treating the first
22 day of the first applicable plan year as the termination
23 date of the plan. This subsection shall not apply to any
24 plan for which an election under section 403(h) of such
25 Act is in effect.”.



1 (3) LIMITATION ON DEDUCTIONS UNDER CER-
2 TAIN PLANS.—Section 404(a)(7)(C)(iii) of the Inter-
3 nal Revenue Code of 1986, as added by this Act, is
4 amended by adding at the end the following new
5 sentence: “This clause shall also apply to any plan
6 for a plan year if an election under section 403 of
7 the Pension Security and Transparency Act of 2005
8 is in effect for such year.”

9 (4) NOTICE.—In the case of a plan amendment
10 adopted in order to comply with this section, any no-
11 tice required under section 204(h) of such Act or
12 section 4980F(e) of such Code shall be provided
13 within 15 days of the effective date of such plan
14 amendment. This subsection shall not apply to any
15 plan unless such plan is maintained pursuant to one
16 or more collective bargaining agreements between
17 employee representatives and 1 or more employers.

18 (g) SPECIAL RULES FOR TERMINATION OF ELIGIBLE
19 PLANS.—During any period an election is in effect under
20 this section with respect to an eligible plan, the Pension
21 Benefit Guaranty Corporation shall, before it seeks or ap-
22 proves a termination of such plan under section 4041(c)
23 or 4042 of the Employee Retirement Income Security Act
24 of 1974—



1 (1) make a determination under section
2 4041(c)(4) or 4042(i) of such Act whether the ter-
3 mination would be necessary if the Secretary of the
4 Treasury were to enter into an agreement under sec-
5 tion 4047(a) of such Act which provides an alter-
6 native funding agreement to replace the amortiza-
7 tion schedule under this section, and

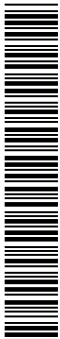
8 (2) if the Corporation determines such an
9 agreement would make such termination unneces-
10 sary, take all necessary actions to ensure the agree-
11 ment is entered into.

12 The Pension Benefit Guaranty Corporation shall make the
13 determination under paragraph (1) within 90 days of re-
14 ceiving all information needed in connection with a request
15 for a termination (or if no such request is made, within
16 90 days of consideration of the termination by the Cor-
17 poration).

18 (h) CERTAIN BENEFIT ACCRUALS AND INCREASES
19 ALLOWED IF ADDITIONAL CONTRIBUTIONS MADE TO
20 COVER COSTS.—

21 (1) IN GENERAL.—If an employer elects the ap-
22 plication of this subsection—

23 (A) the requirements of paragraphs (2)
24 and (3) of subsection (b) shall not apply with



1 respect to any eligible plan maintained by the
2 employer and specified in the election, and

3 (B) the minimum required contribution
4 under subsection (d) for any plan year with re-
5 spect to the plan shall be increased by the
6 amounts described in paragraphs (2) and (3).

7 Any liabilities and assets taken into account under
8 this subsection shall not be taken into account in de-
9 termining the unfunded liability of the plan for pur-
10 poses of subsection (d).

11 (2) CURRENT FUNDING OF ACCRUALS AND IN-
12 CREASES.—The amount determined under this para-
13 graph for any plan year is the target normal cost
14 which would occur under section 302 of such Act
15 and 412 of such Code if—

16 (A) any benefit accrual, or benefit increase
17 taking effect, during the plan year by reason of
18 this subsection were treated as having been ac-
19 crued or earned during the plan year, and

20 (B) the plan were treated as if it were sub-
21 ject to section 302(d) of such Act and section
22 412(d) of such Code.

23 (3) FUNDING MUST BE MAINTAINED.—The
24 amount determined under this paragraph for any
25 plan year is the amount charged to the funding



1 standard account under section 302(d) of such Act
2 and section 412(d) of such Code if—

3 (A) the funding target were determined by
4 only taking into account benefits to which para-
5 graph (2) applied for preceding plan years,

6 (B) the only assets taken into account
7 were the contributions required under this para-
8 graph and paragraph (2) for preceding plan
9 years (and any earnings thereon),

10 (C) the amortization period included only
11 the plan year,

12 (D) the transition rule under section
13 303(c)(4)(B) of such Act and section
14 430(c)(4)(B) of such Code did not apply, and

15 (E) the plan were treated as if it were sub-
16 ject to section 302(d) of such Act and section
17 412(d) of such Code.

18 (4) SPECIAL RULES FOR YEARS BEFORE 2007.—

19 Notwithstanding any other provision of this Act, in
20 the case of an applicable plan year of an eligible
21 plan to which this subsection applies which begins
22 before January 1, 2007, in determining the amounts
23 described in paragraphs (2) and (3) for such plan
24 year—



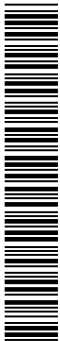
1 (A) the provisions of, and amendments
2 made by, sections 101, 102, 111, and 112 shall
3 apply to such plan year, except that

4 (B) the interest rate used under section
5 303 of such Act and section 430 of such Code
6 for purposes of applying paragraphs (2) and (3)
7 to such plan year shall be the interest rate de-
8 termined under section 302(b)(5) of such Act
9 and section 412(b)(5) of such Code, as in effect
10 for plan years beginning in 2005.

11 (5) ELECTION OUT OF SECTION.—An employer
12 maintaining an eligible plan to which this subsection
13 applies may make a one-time election with respect to
14 any applicable plan year not to have this section
15 apply to such plan year and all subsequent plan
16 years. Subject to subsection (d)(2), the minimum re-
17 quired contribution under section 302 of such Act
18 and 412 of such Code for all such plan years shall
19 be determined without regard to this section.

20 (i) EXCLUSION OF CERTAIN EMPLOYEES FROM MIN-
21 IMUM COVERAGE REQUIREMENTS.—

22 (1) IN GENERAL.—Section 410(b)(3) of such
23 Code is amended by striking the last sentence and
24 inserting the following: “For purposes of subpara-
25 graph (B), management pilots who are not rep-



1 resented in accordance with title II of the Railway
2 Labor Act shall be treated as covered by a collective
3 bargaining agreement described in such subpara-
4 graph if the management pilots manage the flight
5 operations of air pilots who are so represented and
6 the management pilots are, pursuant to the terms of
7 the agreement, included in the group of employees
8 benefitting under the trust described in such sub-
9 paragraph. Subparagraph (B) shall not apply in the
10 case of a plan which provides contributions or bene-
11 fits for employees whose principal duties are not cus-
12 tomarily performed aboard an aircraft in flight
13 (other than management pilots described in the pre-
14 ceding sentence).”.

15 (2) EFFECTIVE DATE.—The amendment made
16 by this subsection shall apply to years beginning be-
17 fore, on, or after the date of the enactment of this
18 Act.

19 (j) EFFECTIVE DATE.—Except as otherwise provided
20 in this section, the amendments made by this section shall
21 apply to plan years ending after the date of the enactment
22 of this Act.



1 **SEC. 302. RECOGNITION OF LEGALLY MANDATED EARLY**
2 **RETIREMENT AGES IN DETERMINING**
3 **AMOUNT OF GUARANTEED BENEFITS.**

4 (a) SINGLE-EMPLOYER PLAN BENEFITS GUARAN-
5 TEED.—Section 4022(b)(3) of the Employee Retirement
6 Income Security Act of 1974 (29 U.S.C. 1322(b)(3)) is
7 amended, in the flush matter following subparagraph (B),
8 by adding at the end the following: “If, at the time of
9 termination of a plan under this title, regulations pre-
10 scribed by the Federal Aviation Administration require an
11 individual to separate from service as a commercial airline
12 pilot after attaining a specified age which is less than age
13 65, the first sentence of this paragraph shall be applied
14 to an individual who is a participant in the plan by reason
15 of such service by substituting such age for age 65.”.

16 (b) AGGREGATE LIMIT ON BENEFIT GUARAN-
17 TEED.—Section 4022B(a) of such Act (29 U.S.C.
18 1322b(a)) is amended by adding at the end the following:
19 “If, as of such date, regulations prescribed by the Federal
20 Aviation Administration require an individual to separate
21 from service as a commercial airline pilot after attaining
22 a specified age which is less than age 65, this subsection
23 shall be applied to an individual who is a participant in
24 any such plan by reason of such service by substituting
25 such age for age 65.”.



1 (c) EFFECTIVE DATE.—The amendments made by
2 this Act shall apply to benefits payable on or after the
3 date of the enactment of this Act.

4 **TITLE IV—FAIRNESS FOR RANK**
5 **AND FILE EMPLOYEES**

6 **SEC. 401. TREATMENT OF NONQUALIFIED DEFERRED COM-**
7 **PENSATION PLANS WHEN EMPLOYER DE-**
8 **FINED BENEFIT PLAN IN AT-RISK STATUS.**

9 (a) IN GENERAL.—Subsection (b) of section 409A of
10 the Internal Revenue Code of 1986 (providing rules relat-
11 ing to funding) is amended by redesignating paragraphs
12 (3) and (4) as paragraphs (4) and (5), respectively, and
13 by inserting after paragraph (2) the following new para-
14 graph:

15 “(3) EMPLOYER’S DEFINED BENEFIT PLAN IN
16 AT-RISK STATUS.—

17 “(A) If—

18 “(i) during any period in which a de-
19 fined benefit plan to which section 412 ap-
20 plies is in an at-risk status, assets are set
21 aside (directly or indirectly) in a trust (or
22 other arrangement determined by the Sec-
23 retary), or transferred to such a trust or
24 other arrangement, for purposes of paying
25 deferred compensation under a non-



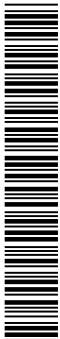
1 qualified deferred compensation plan of the
2 employer maintaining the defined benefit
3 plan, or

4 “(ii) a nonqualified deferred com-
5 pensation plan of the employer provides
6 that assets will become restricted to the
7 provision of benefits under the plan in con-
8 nection with such at-risk status (or other
9 similar financial measure determined by
10 the Secretary) of the defined benefit plan,
11 or assets are so restricted,

12 such assets shall for purposes of section 83 be
13 treated as property transferred in connection
14 with the performance of services whether or not
15 such assets are available to satisfy claims of
16 general creditors.

17 “(B) AT-RISK STATUS.—For purposes of
18 subparagraph (A), a plan is in an at-risk status
19 if the funded current liability percentage (as de-
20 fined in section 412(l)(8)), reduced as described
21 in subparagraph (E) thereof, of the plan is less
22 than 60 percent. ”.

23 (b) CONFORMING AMENDMENTS.—Paragraphs (4)
24 and (5) of section 409A(b) of such Code, as redesignated
25 by subsection (a) of this subsection, are each amended by



1 striking “paragraph (1) or (2)” each place it appears and
2 inserting “paragraph (1), (2), or (3)”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to transfers or reservations of as-
5 sets after December 31, 2005.

6 **SEC. 402. NONQUALIFIED DEFERRED COMPENSATION RE-**
7 **DUCTION BY PERCENTAGE OF UNDERFUNDED**
8 **PLAN UPON BANKRUPTCY OF EMPLOYER.**

9 (a) IN GENERAL.—Subsection (b) of section 409A of
10 the Internal Revenue Code of 1986 (providing rules relat-
11 ing to funding), as amended by section 302, is amended
12 by redesignating paragraphs (4) and (5) as paragraphs
13 (5) and (6), respectively, and by inserting after paragraph
14 (3) the following new paragraph:

15 “(4) REDUCTION IN ALLOWABLE DEFERRED
16 COMPENSATION UPON BANKRUPTCY.—

17 “(A) Upon the commencement of any reor-
18 ganization case under title 11 of the United
19 States Code, or under any similar Federal or
20 State law—

21 “(i) during any period in which a de-
22 fined benefit plan to which section 412 ap-
23 plies is in an at-risk status, assets are set
24 aside (directly or indirectly) in a trust (or
25 other arrangement determined by the Sec-



1 retary), or transferred to such a trust or
2 other arrangement, for purposes of paying
3 deferred compensation under a non-
4 qualified deferred compensation plan of the
5 employer maintaining the defined benefit
6 plan, or

7 “(ii) a nonqualified deferred com-
8 pensation plan of the employer provides
9 that assets will become restricted to the
10 provision of benefits under the plan in con-
11 nection with such at-risk status (or other
12 similar financial measure determined by
13 the Secretary) of the defined benefit plan,
14 or assets are so restricted,

15 the employer shall reduce the amount of benefit
16 under the non-qualified plan by the applicable
17 percentage of underfunding in the pension plan.

18 “(B) APPLICABLE PERCENTAGE.—For
19 purposes of subparagraph (A), the applicable
20 percentage is the excess (if any) of 100 percent-
21 age points over the funded current liability per-
22 centage (as defined in section 412(l)(8)), re-
23 duced as described in subparagraph (E) there-
24 of.



1 “(C) ADDITIONAL TAX.—The tax imposed
2 by this chapter for any taxable year on any tax-
3 payer with respect to whom a benefit is reduced
4 under subparagraph (A) shall be increased by
5 100 percent of the amount of such reduction.
6 Such amount shall not be treated as a tax for
7 purposes of section 26(b)(2).”.

8 (b) CONFORMING AMENDMENTS.—Paragraphs (5)
9 and (6) of section 409A(b) of such Code, as redesignated
10 by subsection (a) of this subsection, are each amended by
11 striking “or (3)” each place it appears and inserting “(3),
12 or (4)”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to transfers or reservations of as-
15 sets after December 31, 2005.

16 **SEC. 403. TERMINATION FAIRNESS STANDARD FOR NON-**
17 **QUALIFIED DEFERRED COMPENSATION**
18 **PLANS IN CONNECTION WITH PENSION PLAN**
19 **TERMINATIONS BASED ON BANKRUPTCY RE-**
20 **ORGANIZATION.**

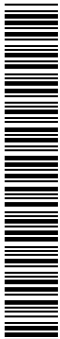
21 (a) IN GENERAL.—Section 206 of the Employee Re-
22 tirement Income Security Act of 1974 (29 U.S.C. 1056)
23 is amended by adding at the end the following new sub-
24 section:



1 “(g) TERMINATION FAIRNESS STANDARD FOR NON-
2 QUALIFIED DEFERRED COMPENSATION PLANS IN CON-
3 NECTION WITH PENSION PLAN TERMINATIONS BASED
4 ON BANKRUPTCY REORGANIZATION.—

5 “(1) IN GENERAL.—In any case in which a cor-
6 poration is a plan sponsor of a defined benefit plan
7 with respect to which a plan amendment is adopted
8 that has the effect of implementing a distress termi-
9 nation of the plan under section 4041(c) based on
10 bankruptcy reorganization or a termination of the
11 plan initiated by the Pension Benefit Guaranty Cor-
12 poration under section 4042 based on bankruptcy
13 reorganization, in any case in which the plan is not
14 sufficient for guaranteed benefits (within the mean-
15 ing of section 4041(d)(2)) as of the proposed termi-
16 nation date, any covered deferred compensation plan
17 established or maintained by such plan sponsor after
18 the date of the adoption of such plan amendment
19 shall meet the termination fairness standard of this
20 subsection with respect to such plan amendment.

21 “(2) TERMINATION FAIRNESS STANDARD.—A
22 covered deferred compensation plan established or
23 maintained by a plan sponsor described in para-
24 graph (1) meets the termination fairness standard of
25 this subsection with respect to a plan amendment



1 described in paragraph (1) if, during the 5-year pe-
2 riod beginning on the date of the adoption of such
3 plan amendment—

4 “(A) no amount of deferred compensation
5 accrues to a disqualified individual under the
6 terms of such covered deferred compensation
7 plan (irrespective of whether the accrual in de-
8 ferred compensation is expressed in the form of
9 a promise, a guarantee, or any other represen-
10 tation), and

11 “(B) in the case of a covered deferred com-
12 pensation plan established during or after the
13 1-year period preceding the notice date (or any
14 amendment to a covered deferred compensation
15 plan if such amendment is adopted during or
16 after such 1-year period), no distribution of ac-
17 crued deferred compensation is made under
18 such plan (or such amendment) to a disquali-
19 fied individual.

20 “(3) DEFINITIONS.—For purposes of this
21 subsection—

22 “(A) NOTICE DATE.—The term ‘notice
23 date’ means, with respect to an amendment de-
24 scribed in paragraph (1)—



1 “(i) in the case of a distress termi-
2 nation under section 4041(d), the date of
3 the advance notice of intent to terminate
4 provided pursuant to section 4041(a)(2),
5 and

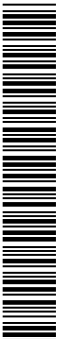
6 “(ii) in the case of a termination initi-
7 ated by the Pension Benefit Guaranty Cor-
8 poration under section 4042, the date of
9 the application to the court under section
10 4042(c).

11 “(B) COVERED DEFERRED COMPENSATION
12 PLAN.—

13 “(i) IN GENERAL.—The term ‘covered
14 deferred compensation plan’ means any
15 plan providing for the deferral of com-
16 pensation of a disqualified individual,
17 whether or not—

18 “(I) compensation of the dis-
19 qualified individual which is deferred
20 under such plan is subject to substan-
21 tial risk of forfeiture,

22 “(II) the disqualified individual’s
23 rights to the compensation deferred
24 under the plan are no greater than



1 the rights of a general creditor of the
2 plan sponsor,

3 “(III) all amounts set aside (di-
4 rectly or indirectly) for purposes of
5 paying the deferred compensation (in-
6 cluding income), and all income at-
7 tributable to such amounts, remain
8 (until made available to the disquali-
9 fied individual or other beneficiary)
10 solely the property of the plan sponsor
11 (without being restricted to the provi-
12 sion of benefits under the plan),

13 “(IV) the amounts referred to in
14 subclause (III) are available to satisfy
15 the claims of the plan sponsor’s gen-
16 eral creditors at all times (not merely
17 after bankruptcy or insolvency), and

18 “(V) some or all of the com-
19 pensation of the disqualified individual
20 which is deferred under such plan is
21 guaranteed by an insurance company,
22 insurance service, or other similar or-
23 ganization.



1 “(ii) EXCEPTION FOR QUALIFIED
2 PLANS.—Such term shall not include a
3 plan that is—

4 “(I) described in section
5 219(g)(5)(A) of the Internal Revenue
6 Code of 1986, or

7 “(II) an eligible deferred com-
8 pensation plan (as defined in section
9 457(b) of such Code) of an eligible
10 employer described in section
11 457(e)(1)(A) of such Code.

12 “(iii) PLAN INCLUDES ARRANGE-
13 MENTS, ETC.—For purposes of this sub-
14 paragraph, the term ‘plan’ includes any
15 agreement or arrangement.

16 “(C) DISQUALIFIED INDIVIDUAL.—The
17 term ‘disqualified individual’ means a director
18 or executive officer of the plan sponsor.

19 “(D) TERMINATION BASED ON BANK-
20 RUPTCY REORGANIZATION.—A termination of a
21 plan which is a distress termination under sec-
22 tion 4041(c) or a termination instituted by the
23 Pension Benefit Guaranty Corporation under
24 section 4042 is ‘based on bankruptcy reorga-
25 nization’ if such termination is based in whole

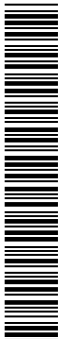


1 or in part on the filing, by or against any per-
2 son who is a contributing sponsor of such plan
3 or a member of such sponsor's controlled group,
4 of a petition seeking reorganization in a case
5 under title 11, United States Code, or under
6 any similar law of a State or political subdivi-
7 sion of a State (or such a case in which liquida-
8 tion is sought has been converted to a case in
9 which reorganization is sought).

10 “(E) TITLE IV TERMINOLOGY.—Any term
11 used in this subsection which is defined in sec-
12 tion 4001(a) shall have the meaning provided
13 such term in section 4001(a).

14 “(4) SPECIAL RULES.—

15 “(A) COORDINATED BENEFITS.—If the
16 benefits of 2 or more defined benefit plans es-
17 tablished or maintained by an employer are co-
18 ordinated in such a manner as to have the ef-
19 fect of the adoption of an amendment described
20 in paragraph (1), the sponsor of the defined
21 benefit plan or plans providing for such coordi-
22 nation shall be treated as having adopted such
23 a plan amendment as of the date such coordina-
24 tion begins.



1 “(B) MULTIPLE AMENDMENTS.—The Sec-
2 retary shall issue regulations to prevent the
3 avoidance of the purposes of this subsection
4 through the use of 2 or more plan amendments
5 rather than a single amendment.

6 “(C) CONTROLLED GROUPS, ETC.—For
7 purposes of this subsection, all persons treated
8 as a single employer under subsection (b), (c),
9 (m), or (o) of section 414 of the Internal Rev-
10 enue Code of 1986 shall be treated as 1 em-
11 ployer.

12 “(D) TREATMENT OF EARNINGS.—Ref-
13 erences to deferred compensation shall be treat-
14 ed as including references to income attrib-
15 utable to such compensation or such income.

16 “(5) COORDINATION.—The Secretary and the
17 Secretary of the Treasury shall ensure, through the
18 execution of an interagency memorandum of under-
19 standing among such Secretaries, that regulations,
20 rulings, and interpretations issued by such Secre-
21 taries relating to the same matter over which both
22 such Secretaries have responsibility under this sub-
23 section and section 4980H of the Internal Revenue
24 Code of 1986 are administered so as to have the
25 same effect at all times.



1 “(6) EFFECT OF WAIVER GRANTED BY SEC-
2 RETARY OF THE TREASURY.—To the extent that any
3 requirement of the termination fairness standard of
4 section 4980H(a)(2) of the Internal Revenue Code
5 of 1986 is waived by the Secretary of the Treasury
6 with respect to any disqualified individual under sec-
7 tion 4980H(g) of such Code in the case of any plan
8 amendment having the effect of a termination de-
9 scribed in paragraph (1) of this subsection, such re-
10 quirement under the termination fairness standard
11 of paragraph (2) of this subsection shall not apply
12 with respect to such individual in the case of such
13 plan amendment.”.

14 (b) EXCISE TAX ON FUNDING NONQUALIFIED DE-
15 FERRED COMPENSATION PLANS IN THE EVENT OF A
16 PENSION PLAN TERMINATION BASED ON BANKRUPTCY
17 REORGANIZATION.—

18 (1) IN GENERAL.—Chapter 43 of the Internal
19 Revenue Code of 1986 (relating to qualified pension,
20 etc., plans) is amended by adding at the end the fol-
21 lowing new section:



1 **“SEC. 4980H. FUNDING NONQUALIFIED DEFERRED COM-**
2 **PENSATION PLANS.**

3 “(a) IMPOSITION OF TAX IN THE EVENT OF A PEN-
4 SION PLAN TERMINATION BASED ON BANKRUPTCY RE-
5 ORGANIZATION.—

6 “(1) IN GENERAL.—In any case in which a cor-
7 poration is a plan sponsor of a defined benefit plan
8 with respect to which an plan amendment is adopted
9 that has the effect of implementing a distress termi-
10 nation of the plan under section 4041(c) of the Em-
11 ployee Retirement Income Security Act of 1974
12 based on bankruptcy reorganization or a termination
13 of the plan initiated by the Pension Benefit Guar-
14 anty Corporation under section 4042 of such Act
15 based on bankruptcy reorganization, in any case in
16 which the plan is not sufficient for guaranteed bene-
17 fits (within the meaning of section 4041(d)(2) of
18 such Act) as of the proposed termination date, there
19 is hereby imposed a tax on any failure to meet the
20 termination fairness standard of paragraph (2) with
21 respect to such plan amendment.

22 “(2) TERMINATION FAIRNESS STANDARD.—A
23 covered deferred compensation plan established or
24 maintained by a plan sponsor described in para-
25 graph (1) meets the termination fairness standard of
26 this subsection with respect to a plan amendment

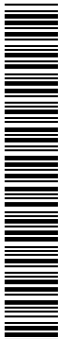


1 described in paragraph (1) if, during the 5-year pe-
2 riod beginning on the date of the adoption of such
3 plan amendment—

4 “(A) no amount of deferred compensation
5 accrues to a disqualified individual under the
6 terms of such covered deferred compensation
7 plan, irrespective of whether the accrual in de-
8 ferred compensation is expressed in the form of
9 a promise, a guarantee, or any other represen-
10 tation, and

11 “(B) in the case of a covered deferred com-
12 pensation plan established during or after the
13 1-year period preceding the notice date (or any
14 amendment to a covered deferred compensation
15 plan if such amendment is adopted during or
16 after such 1-year period), no distribution of ac-
17 crued deferred compensation is made under
18 such plan (or such amendment) to a disquali-
19 fied individual.

20 “(b) AMOUNT OF TAX.—The amount of the tax im-
21 posed by subsection (a) shall be equal to the amount of
22 the accrual described in subsection (a)(2)(A) comprising
23 the failure or the distribution described in subsection
24 (a)(2)(B) comprising the failure.



1 “(c) LIABILITY FOR TAX.—The plan sponsor shall be
2 liable for the tax imposed by this section.

3 “(d) DEFINITIONS.—For purposes of this section—

4 “(1) NOTICE DATE.—The term ‘notice date’
5 means with respect to an amendment described in
6 subsection (a)(1)—

7 “(A) in the case of a distress termination
8 under section 4041(d) of the Employee Retirement
9 Income Security Act of 1974, the date of
10 the advance notice of intent to terminate pro-
11 vided pursuant to section 4041(a)(2) of such
12 Act, and

13 “(B) in the case of a termination initiated
14 by the Pension Benefit Guaranty Corporation
15 under section 4042 of such Act, the date of the
16 application to the court under section 4042(c)
17 of such Act.

18 “(2) COVERED DEFERRED COMPENSATION
19 PLAN.—

20 “(A) IN GENERAL.—The term ‘covered de-
21 ferred compensation plan’ means any plan pro-
22 viding for the deferral of compensation of a dis-
23 qualified individual, whether or not—

24 “(i) compensation of the disqualified
25 individual which is deferred under such



1 plan is subject to substantial risk of for-
2 feiture,

3 “(ii) the disqualified individual’s
4 rights to the compensation deferred under
5 the plan are no greater than the rights of
6 a general creditor of the plan sponsor,

7 “(iii) all amounts set aside (directly or
8 indirectly) for purposes of paying the de-
9 ferred compensation, and all income attrib-
10 utable to such amounts, remain (until
11 made available to the participant or other
12 beneficiary) solely the property of the
13 (without being restricted to the provision
14 of benefits under the plan),

15 “(iv) the amounts referred to in
16 clause (iii) are available to satisfy the
17 claims of the plan sponsor’s general credi-
18 tors at all times (not merely after bank-
19 ruptcy or insolvency), and

20 “(v) some or all of the compensation
21 of the disqualified individual which is de-
22 ferred under such plan is guaranteed by an
23 insurance company, insurance service, or
24 other similar organization.



1 “(B) EXCEPTION FOR QUALIFIED
2 PLANS.—Such term shall not include a plan
3 that is—

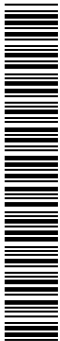
4 “(i) described in section 219(g)(5)(A),
5 or

6 “(ii) an eligible deferred compensation
7 plan (as defined in section 457(b)) of an
8 eligible employer described in section
9 457(e)(1)(A).

10 “(C) PLAN INCLUDES ARRANGEMENTS,
11 ETC.—For purposes of this paragraph, the term
12 ‘plan’ includes any agreement or arrangement.

13 “(3) DISQUALIFIED INDIVIDUAL.—The term
14 ‘disqualified individual’ means a director or executive
15 officer of the plan sponsor.

16 “(4) TERMINATION BASED ON BANKRUPTCY
17 REORGANIZATION.—A termination of a plan which is
18 a distress termination under section 4041(c) of the
19 Employee Retirement Income Security Act of 1974
20 or a termination instituted by the Pension Benefit
21 Guaranty Corporation under section 4042 of such
22 Act is ‘based on bankruptcy reorganization’ if such
23 termination is based in whole or in part on the fil-
24 ing, by or against any person who is a contributing
25 sponsor of such plan or a member of such sponsor’s



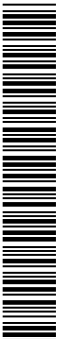
1 controlled group, of a petition seeking reorganization
2 in a case under title 11, United States Code, or
3 under any similar law of a State or political subdivi-
4 sion of a State (or such a case in which liquidation
5 is sought has been converted to a case in which reor-
6 ganization is sought).

7 “(5) TITLE IV TERMINOLOGY.—Any term used
8 in this section which is defined in section 4001(a) of
9 the Employee Retirement Income Security Act of
10 1974 shall have the meaning provided such term in
11 such section 4001(a).

12 “(e) SPECIAL RULES.—

13 “(1) COORDINATED BENEFITS.—If the benefits
14 of 2 or more defined benefit plans established or
15 maintained by an employer are coordinated in such
16 a manner as to have the effect of the adoption of an
17 amendment described in subsection (a)(1), the spon-
18 sor of the defined benefit plan or plans providing for
19 such coordination shall be treated as having adopted
20 such a plan amendment as of the date such coordi-
21 nation begins.

22 “(2) MULTIPLE AMENDMENTS.—The Secretary
23 shall issue regulations to prevent the avoidance of
24 the purposes of this section through the use of 2 or



1 more plan amendments rather than a single amend-
2 ment.

3 “(3) CONTROLLED GROUPS, ETC.—For pur-
4 poses of this section, all persons treated as a single
5 employer under subsection (b), (c), (m), or (o) of
6 section 414 shall be treated as 1 employer.

7 “(4) TREATMENT OF EARNINGS.—References to
8 deferred compensation shall be treated as including
9 references to income attributable to such compensa-
10 tion or such income.

11 “(f) COORDINATION.—The Secretary and the Sec-
12 retary of Labor shall ensure, through the execution of an
13 interagency memorandum of understanding among such
14 Secretaries, that regulations, rulings, and interpretations
15 issued by such Secretaries relating to the same matter
16 over which both such Secretaries have responsibility under
17 this section and section 206(g) of the Employee Retire-
18 ment Income Security Act of 1974 are administered so
19 as to have the same effect at all times.

20 “(g) WAIVER.—

21 “(1) IN GENERAL.—In the case of any plan
22 amendment having the effect of a termination de-
23 scribed in subsection (a)(1), the Secretary may
24 waive the application of any requirement of the ter-
25 mination fairness standard of subsection (a)(2) with



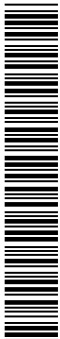
1 respect to any disqualified individual who first com-
2 mences service for the plan sponsor after the notice
3 date with respect to such plan amendment. The Sec-
4 retary may grant any such waiver in the case of any
5 such plan amendment with respect to any such dis-
6 qualified individual only after consultation with the
7 Pension Benefit Guaranty Corporation. The Sec-
8 retary shall promptly notify the Secretary of Labor
9 of any such waiver granted by the Secretary.

10 “(2) REQUIREMENTS FOR WAIVER.—A waiver
11 may be granted under paragraph (1) only—

12 “(A) upon the filing with the Secretary by
13 the plan sponsor of an application for such
14 waiver, in such form and manner as shall be
15 prescribed in regulations of the Secretary,

16 “(B) upon a showing, to the satisfaction of
17 the Secretary, that such waiver is a business
18 necessity for the plan sponsor, as determined
19 under such regulations, and is in the interest of
20 plan participants and beneficiaries, as deter-
21 mined under such regulations, and

22 “(C) after the participants, in such form
23 and manner as shall be provided in such regula-
24 tions, have been notified of the filing of the ap-
25 plication for the waiver and have been provided



1 a reasonable opportunity to provide in advance
2 comments to the Secretary regarding the pro-
3 posed waiver.”.

4 (2) CLERICAL AMENDMENT.—The table of sec-
5 tions for chapter 43 of such Code is amended by
6 adding at the end the following new item:

“Sec. 4980H. Funding nonqualified deferred compensation plans.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to—

9 (1) plan amendments adopted on or after May
10 10, 2005, and

11 (2) plan amendments adopted before such date
12 implementing a plan termination as described in sec-
13 tion 206(g)(1) of the Employee Retirement Income
14 Security Act of 1974 (as added by subsection (a)) or
15 section 4980H(a)(1)(A) of the Internal Revenue
16 Code of 1986 (as added by subsection (b)) based on
17 a bankruptcy reorganization in a case under title 11
18 of the United States Code (or under any similar law
19 of a State or a political subdivision of a State) pend-
20 ing on such date.



1 **TITLE V—FUNDING AND DEDUC-**
2 **TION RULES FOR MULTIEM-**
3 **PLOYER DEFINED BENEFIT**
4 **PLANS AND RELATED PROVI-**
5 **SIONS**

6 **Subtitle A—Funding Rules**

7 **PART I—AMENDMENTS TO EMPLOYEE**

8 **RETIREMENT INCOME SECURITY ACT OF 1974**

9 **SEC. 501. FUNDING RULES FOR MULTIEMPLOYER DEFINED**
10 **BENEFIT PLANS.**

11 (a) IN GENERAL.—Part 3 of subtitle B of title I of
12 the Employee Retirement Income Security Act of 1974 (as
13 amended by this Act) is amended by inserting after section
14 303 the following new section:

15 “MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER
16 PLANS

17 “SEC. 304. (a) IN GENERAL.—For purposes of sec-
18 tion 302, the accumulated funding deficiency of a multi-
19 employer plan for any plan year is—

20 “(1) except as provided in paragraph (2), the
21 amount, determined as of the end of the plan year,
22 equal to the excess (if any) of the total charges to
23 the funding standard account of the plan for all plan
24 years (beginning with the first plan year for which



1 this part applies to the plan) over the total credits
2 to such account for such years, and

3 “(2) if the multiemployer plan is in reorganiza-
4 tion for any plan year, the accumulated funding de-
5 ficiency of the plan determined under section 4243.

6 “(b) FUNDING STANDARD ACCOUNT.—

7 “(1) ACCOUNT REQUIRED.—Each multiem-
8 ployer plan to which this part applies shall establish
9 and maintain a funding standard account. Such ac-
10 count shall be credited and charged solely as pro-
11 vided in this section.

12 “(2) CHARGES TO ACCOUNT.—For a plan year,
13 the funding standard account shall be charged with
14 the sum of—

15 “(A) the normal cost of the plan for the
16 plan year,

17 “(B) the amounts necessary to amortize in
18 equal annual installments (until fully amor-
19 tized)—

20 “(i) separately, with respect to each
21 plan year, the net increase (if any) in un-
22 funded past service liability under the plan
23 arising from plan amendments adopted in
24 such year, over a period of 15 plan years,



1 “(ii) separately, with respect to each
2 plan year, the net experience loss (if any)
3 under the plan, over a period of 15 plan
4 years, and

5 “(iii) separately, with respect to each
6 plan year, the net loss (if any) resulting
7 from changes in actuarial assumptions
8 used under the plan, over a period of 15
9 plan years,

10 “(C) the amount necessary to amortize
11 each waived funding deficiency (within the
12 meaning of section 302(c)(3)) for each prior
13 plan year in equal annual installments (until
14 fully amortized) over a period of 15 plan years,

15 “(D) the amount necessary to amortize in
16 equal annual installments (until fully amor-
17 tized) over a period of 5 plan years any amount
18 credited to the funding standard account under
19 section 302(b)(3)(D) (as in effect on the day
20 before the date of the enactment of the Pension
21 Security and Transparency Act of 2005), and

22 “(E) the amount necessary to amortize in
23 equal annual installments (until fully amor-
24 tized) over a period of 20 years the contribu-
25 tions which would be required to be made under



1 the plan but for the provisions of section
2 302(c)(7)(A)(i)(I) (as in effect on the day be-
3 fore the date of the enactment of the Pension
4 Security and Transparency Act of 2005).

5 “(3) CREDITS TO ACCOUNT.—For a plan year,
6 the funding standard account shall be credited with
7 the sum of—

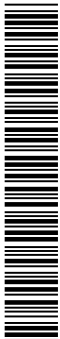
8 “(A) the amount considered contributed by
9 the employer to or under the plan for the plan
10 year,

11 “(B) the amount necessary to amortize in
12 equal annual installments (until fully amor-
13 tized)—

14 “(i) separately, with respect to each
15 plan year, the net decrease (if any) in un-
16 funded past service liability under the plan
17 arising from plan amendments adopted in
18 such year, over a period of 15 plan years,

19 “(ii) separately, with respect to each
20 plan year, the net experience gain (if any)
21 under the plan, over a period of 15 plan
22 years, and

23 “(iii) separately, with respect to each
24 plan year, the net gain (if any) resulting
25 from changes in actuarial assumptions



1 used under the plan, over a period of 15
2 plan years,

3 “(C) the amount of the waived funding de-
4 ficiency (within the meaning of section
5 302(c)(3)) for the plan year, and

6 “(D) in the case of a plan year for which
7 the accumulated funding deficiency is deter-
8 mined under the funding standard account if
9 such plan year follows a plan year for which
10 such deficiency was determined under the alter-
11 native minimum funding standard under section
12 305 (as in effect on the day before the date of
13 the enactment of the Pension Security and
14 Transparency Act of 2005), the excess (if any)
15 of any debit balance in the funding standard
16 account (determined without regard to this sub-
17 paragraph) over any debit balance in the alter-
18 native minimum funding standard account.

19 “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-
20 ORTIZED TO PLAN YEARS BEFORE 2007.—In the case
21 of any amount amortized under section 302(b) (as
22 in effect on the day before the date of the enactment
23 of the Pension Security and Transparency Act of
24 2005) over any period beginning with a plan year
25 beginning before 2007, in lieu of the amortization



1 described in paragraphs (2)(B) and (3)(B), such
2 amount shall continue to be amortized under such
3 section as so in effect.

4 “(5) COMBINING AND OFFSETTING AMOUNTS
5 TO BE AMORTIZED.—Under regulations prescribed
6 by the Secretary of the Treasury, amounts required
7 to be amortized under paragraph (2) or paragraph
8 (3), as the case may be—

9 “(A) may be combined into one amount
10 under such paragraph to be amortized over a
11 period determined on the basis of the remaining
12 amortization period for all items entering into
13 such combined amount, and

14 “(B) may be offset against amounts re-
15 quired to be amortized under the other such
16 paragraph, with the resulting amount to be am-
17 ortized over a period determined on the basis of
18 the remaining amortization periods for all items
19 entering into whichever of the two amounts
20 being offset is the greater.

21 “(6) INTEREST.—The funding standard ac-
22 count (and items therein) shall be charged or cred-
23 ited (as determined under regulations prescribed by
24 the Secretary of the Treasury) with interest at the



1 appropriate rate consistent with the rate or rates of
2 interest used under the plan to determine costs.

3 “(7) SPECIAL RULES RELATING TO CHARGES
4 AND CREDITS TO FUNDING STANDARD ACCOUNT.—
5 For purposes of this part—

6 “(A) WITHDRAWAL LIABILITY.—Any
7 amount received by a multiemployer plan in
8 payment of all or part of an employer’s with-
9 drawal liability under part 1 of subtitle E of
10 title IV shall be considered an amount contrib-
11 uted by the employer to or under the plan. The
12 Secretary of the Treasury may prescribe by reg-
13 ulation additional charges and credits to a mul-
14 tiemployer plan’s funding standard account to
15 the extent necessary to prevent withdrawal li-
16 ability payments from being unduly reflected as
17 advance funding for plan liabilities.

18 “(B) ADJUSTMENTS WHEN A MULTITEM-
19 PLOYER PLAN LEAVES REORGANIZATION.—If a
20 multiemployer plan is not in reorganization in
21 the plan year but was in reorganization in the
22 immediately preceding plan year, any balance in
23 the funding standard account at the close of
24 such immediately preceding plan year—



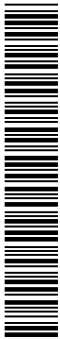
1 “(i) shall be eliminated by an offset-
2 ting credit or charge (as the case may be),
3 but

4 “(ii) shall be taken into account in
5 subsequent plan years by being amortized
6 in equal annual installments (until fully
7 amortized) over 30 plan years.

8 The preceding sentence shall not apply to the
9 extent of any accumulated funding deficiency
10 under section 4243(a) as of the end of the last
11 plan year that the plan was in reorganization.

12 “(C) PLAN PAYMENTS TO SUPPLEMENTAL
13 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT
14 FUND.—Any amount paid by a plan during a
15 plan year to the Pension Benefit Guaranty Cor-
16 poration pursuant to section 4222 of this Act or
17 to a fund exempt under section 501(c)(22) of
18 the Internal Revenue Code of 1986 pursuant to
19 section 4223 of this Act shall reduce the
20 amount of contributions considered received by
21 the plan for the plan year.

22 “(D) INTERIM WITHDRAWAL LIABILITY
23 PAYMENTS.—Any amount paid by an employer
24 pending a final determination of the employer’s
25 withdrawal liability under part 1 of subtitle E



1 of title IV and subsequently refunded to the
2 employer by the plan shall be charged to the
3 funding standard account in accordance with
4 regulations prescribed by the Secretary of the
5 Treasury.

6 “(E) ELECTION FOR DEFERRAL OF
7 CHARGE FOR PORTION OF NET EXPERIENCE
8 LOSS.—If an election is in effect under section
9 302(b)(7)(F) (as in effect on the day before the
10 date of the enactment of the Pension Security
11 and Transparency Act of 2005) for any plan
12 year, the funding standard account shall be
13 charged in the plan year to which the portion
14 of the net experience loss deferred by such elec-
15 tion was deferred with the amount so deferred
16 (and paragraph (2)(B)(ii) shall not apply to the
17 amount so charged).

18 “(F) FINANCIAL ASSISTANCE.—Any
19 amount of any financial assistance from the
20 Pension Benefit Guaranty Corporation to any
21 plan, and any repayment of such amount, shall
22 be taken into account under this section and
23 section 412 of the Internal Revenue Code of
24 1986 in such manner as is determined by the
25 Secretary of the Treasury.



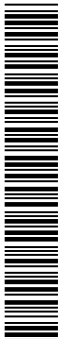
1 “(G) SHORT-TERM BENEFITS.—To the ex-
2 tent that any plan amendment increases the un-
3 funded past service liability under the plan by
4 reason of an increase in benefits which are pay-
5 able under the terms of the plan for a period
6 that does not exceed 14 years from the effective
7 date of the amendment, paragraph (2)(B)(i)
8 shall be applied separately with respect to such
9 increase in unfunded past service liability by
10 substituting the number of years of the period
11 during which such benefits are payable for ‘15’.

12 “(c) ADDITIONAL RULES.—

13 “(1) DETERMINATIONS TO BE MADE UNDER
14 FUNDING METHOD.—For purposes of this part, nor-
15 mal costs, accrued liability, past service liabilities,
16 and experience gains and losses shall be determined
17 under the funding method used to determine costs
18 under the plan.

19 “(2) VALUATION OF ASSETS.—

20 “(A) IN GENERAL.—For purposes of this
21 part, the value of the plan’s assets shall be de-
22 termined on the basis of any reasonable actu-
23 arial method of valuation which takes into ac-
24 count fair market value and which is permitted

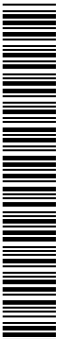


1 under regulations prescribed by the Secretary of
2 the Treasury.

3 “(B) ELECTION WITH RESPECT TO
4 BONDS.—The value of a bond or other evidence
5 of indebtedness which is not in default as to
6 principal or interest may, at the election of the
7 plan administrator, be determined on an amor-
8 tized basis running from initial cost at purchase
9 to par value at maturity or earliest call date.
10 Any election under this subparagraph shall be
11 made at such time and in such manner as the
12 Secretary of the Treasury shall by regulations
13 provide, shall apply to all such evidences of in-
14 debtedness, and may be revoked only with the
15 consent of such Secretary.

16 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
17 SONABLE.—For purposes of this section, all costs, li-
18 abilities, rates of interest, and other factors under
19 the plan shall be determined on the basis of actu-
20 arial assumptions and methods—

21 “(A) each of which is reasonable (taking
22 into account the experience of the plan and rea-
23 sonable expectations), and



1 “(B) which, in combination, offer the actu-
2 ary’s best estimate of anticipated experience
3 under the plan.

4 “(4) TREATMENT OF CERTAIN CHANGES AS EX-
5 PERIENCE GAIN OR LOSS.—For purposes of this sec-
6 tion, if—

7 “(A) a change in benefits under the Social
8 Security Act or in other retirement benefits cre-
9 ated under Federal or State law, or

10 “(B) a change in the definition of the term
11 ‘wages’ under section 3121 of the Internal Rev-
12 enue Code of 1986, or a change in the amount
13 of such wages taken into account under regula-
14 tions prescribed for purposes of section
15 401(a)(5) of such Code,
16 results in an increase or decrease in accrued liability
17 under a plan, such increase or decrease shall be
18 treated as an experience loss or gain.

19 “(5) FULL FUNDING.—If, as of the close of a
20 plan year, a plan would (without regard to this para-
21 graph) have an accumulated funding deficiency in
22 excess of the full funding limitation—

23 “(A) the funding standard account shall be
24 credited with the amount of such excess, and



1 “(B) all amounts described in subpara-
2 graphs (B), (C), and (D) of subsection (b) (2)
3 and subparagraph (B) of subsection (b)(3)
4 which are required to be amortized shall be con-
5 sidered fully amortized for purposes of such
6 subparagraphs.

7 “(6) FULL-FUNDING LIMITATION.—

8 “(A) IN GENERAL.—For purposes of para-
9 graph (5), the term ‘full-funding limitation’
10 means the excess (if any) of—

11 “(i) the accrued liability (including
12 normal cost) under the plan (determined
13 under the entry age normal funding meth-
14 od if such accrued liability cannot be di-
15 rectly calculated under the funding method
16 used for the plan), over

17 “(ii) the lesser of—

18 “(I) the fair market value of the
19 plan’s assets, or

20 “(II) the value of such assets de-
21 termined under paragraph (2).

22 “(B) MINIMUM AMOUNT.—

23 “(i) IN GENERAL.—In no event shall
24 the full-funding limitation determined



1 under subparagraph (A) be less than the
2 excess (if any) of—

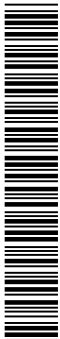
3 “(I) 90 percent of the current li-
4 ability of the plan (including the ex-
5 pected increase in current liability due
6 to benefits accruing during the plan
7 year), over

8 “(II) the value of the plan’s as-
9 sets determined under paragraph (2).

10 “(ii) ASSETS.—For purposes of clause
11 (i), assets shall not be reduced by any
12 credit balance in the funding standard ac-
13 count.

14 “(C) FULL FUNDING LIMITATION.—For
15 purposes of this paragraph, unless otherwise
16 provided by the plan, the accrued liability under
17 a multiemployer plan shall not include benefits
18 which are not nonforfeitable under the plan
19 after the termination of the plan (taking into
20 consideration section 411(d)(3) of the Internal
21 Revenue Code of 1986).

22 “(D) CURRENT LIABILITY.—For purposes
23 of this paragraph—



1 “(i) IN GENERAL.—The term ‘current
2 liability’ means all liabilities to employees
3 and their beneficiaries under the plan.

4 “(ii) TREATMENT OF UNPREDICTABLE
5 CONTINGENT EVENT BENEFITS.—For pur-
6 poses of clause (i), any benefit contingent
7 on an event other than—

8 “(I) age, service, compensation,
9 death, or disability, or

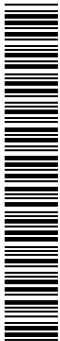
10 “(II) an event which is reason-
11 ably and reliably predictable (as deter-
12 mined by the Secretary of the Treas-
13 ury),

14 shall not be taken into account until the
15 event on which the benefit is contingent oc-
16 curs.

17 “(iii) INTEREST RATE USED.—The
18 rate of interest used to determine current
19 liability under this paragraph shall be the
20 rate of interest determined under subpara-
21 graph (E).

22 “(iv) MORTALITY TABLES.—

23 “(I) COMMISSIONERS’ STANDARD
24 TABLE.—In the case of plan years be-
25 ginning before the first plan year to



1 which the first tables prescribed under
2 subclause (II) apply, the mortality
3 table used in determining current li-
4 ability under this paragraph shall be
5 the table prescribed by the Secretary
6 of the Treasury which is based on the
7 prevailing commissioners' standard
8 table (described in section
9 807(d)(5)(A) of the Internal Revenue
10 Code of 1986) used to determine re-
11 serves for group annuity contracts
12 issued on January 1, 1993.

13 “(II) SECRETARIAL AUTHOR-
14 ITY.—The Secretary of the Treasury
15 may by regulation prescribe for plan
16 years beginning after December 31,
17 1999, mortality tables to be used in
18 determining current liability under
19 this subsection. Such tables shall be
20 based upon the actual experience of
21 pension plans and projected trends in
22 such experience. In prescribing such
23 tables, such Secretary shall take into
24 account results of available inde-



1 pendent studies of mortality of indi-
2 viduals covered by pension plans.

3 “(v) SEPARATE MORTALITY TABLES
4 FOR THE DISABLED.—Notwithstanding
5 clause (iv)—

6 “(I) IN GENERAL.—The Sec-
7 retary of the Treasury shall establish
8 mortality tables which may be used
9 (in lieu of the tables under clause (iv))
10 to determine current liability under
11 this subsection for individuals who are
12 entitled to benefits under the plan on
13 account of disability. Such Secretary
14 shall establish separate tables for indi-
15 viduals whose disabilities occur in
16 plan years beginning before January
17 1, 1995, and for individuals whose
18 disabilities occur in plan years begin-
19 ning on or after such date.

20 “(II) SPECIAL RULE FOR DIS-
21 ABILITIES OCCURRING AFTER 1994.—
22 In the case of disabilities occurring in
23 plan years beginning after December
24 31, 1994, the tables under subclause
25 (I) shall apply only with respect to in-



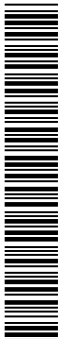
1 individuals described in such subclause
2 who are disabled within the meaning
3 of title II of the Social Security Act
4 and the regulations thereunder.

5 “(vi) PERIODIC REVIEW.—The Sec-
6 retary of the Treasury shall periodically (at
7 least every 5 years) review any tables in ef-
8 fect under this subparagraph and shall, to
9 the extent such Secretary determines nec-
10 essary, by regulation update the tables to
11 reflect the actual experience of pension
12 plans and projected trends in such experi-
13 ence.

14 “(E) REQUIRED CHANGE OF INTEREST
15 RATE.—For purposes of determining a plan’s
16 current liability for purposes of this
17 paragraph—

18 “(i) IN GENERAL.—If any rate of in-
19 terest used under the plan under sub-
20 section (b)(6) to determine cost is not
21 within the permissible range, the plan shall
22 establish a new rate of interest within the
23 permissible range.

24 “(ii) PERMISSIBLE RANGE.—For pur-
25 poses of this subparagraph—



1 “(I) IN GENERAL.—Except as
2 provided in subclause (II), the term
3 ‘permissible range’ means a rate of in-
4 terest which is not more than 5 per-
5 cent above, and not more than 10 per-
6 cent below, the weighted average of
7 the rates of interest on 30-year Treas-
8 ury securities during the 4-year period
9 ending on the last day before the be-
10 ginning of the plan year.

11 “(II) SECRETARIAL AUTHOR-
12 ITY.—If the Secretary of the Treasury
13 finds that the lowest rate of interest
14 permissible under subclause (I) is un-
15 reasonably high, such Secretary may
16 prescribe a lower rate of interest, ex-
17 cept that such rate may not be less
18 than 80 percent of the average rate
19 determined under such subclause.

20 “(iii) ASSUMPTIONS.—Notwith-
21 standing paragraph (3)(A), the interest
22 rate used under the plan shall be—

23 “(I) determined without taking
24 into account the experience of the
25 plan and reasonable expectations, but



1 “(II) consistent with the assump-
2 tions which reflect the purchase rates
3 which would be used by insurance
4 companies to satisfy the liabilities
5 under the plan.

6 “(7) ANNUAL VALUATION.—

7 “(A) IN GENERAL.—For purposes of this
8 section, a determination of experience gains and
9 losses and a valuation of the plan’s liability
10 shall be made not less frequently than once
11 every year, except that such determination shall
12 be made more frequently to the extent required
13 in particular cases under regulations prescribed
14 by the Secretary of the Treasury.

15 “(B) VALUATION DATE.—

16 “(i) CURRENT YEAR.—Except as pro-
17 vided in clause (ii), the valuation referred
18 to in subparagraph (A) shall be made as of
19 a date within the plan year to which the
20 valuation refers or within one month prior
21 to the beginning of such year.

22 “(ii) USE OF PRIOR YEAR VALU-
23 ATION.—The valuation referred to in sub-
24 paragraph (A) may be made as of a date
25 within the plan year prior to the year to



1 which the valuation refers if, as of such
2 date, the value of the assets of the plan are
3 not less than 100 percent of the plan's cur-
4 rent liability (as defined in paragraph
5 (6)(D) without regard to clause (iv) there-
6 of).

7 “(iii) ADJUSTMENTS.—Information
8 under clause (ii) shall, in accordance with
9 regulations, be actuarially adjusted to re-
10 flect significant differences in participants.

11 “(iv) LIMITATION.—A change in fund-
12 ing method to use a prior year valuation,
13 as provided in clause (ii), may not be made
14 unless as of the valuation date within the
15 prior plan year, the value of the assets of
16 the plan are not less than 125 percent of
17 the plan's current liability (as defined in
18 paragraph (6)(D) without regard to clause
19 (iv) thereof).

20 “(8) TIME WHEN CERTAIN CONTRIBUTIONS
21 DEEMED MADE.—For purposes of this section, any
22 contributions for a plan year made by an employer
23 after the last day of such plan year, but not later
24 than two and one-half months after such day, shall
25 be deemed to have been made on such last day. For



1 purposes of this subparagraph, such two and one-
2 half month period may be extended for not more
3 than six months under regulations prescribed by the
4 Secretary of the Treasury.

5 “(d) EXTENSION OF AMORTIZATION PERIODS FOR
6 MULTIEMPLOYER PLANS.—

7 “(1) AUTOMATIC EXTENSION UPON APPLICA-
8 TION BY CERTAIN PLANS.—

9 “(A) IN GENERAL.—If the plan sponsor of
10 a multiemployer plan—

11 “(i) submits to the Secretary of the
12 Treasury an application for an extension of
13 the period of years required to amortize
14 any unfunded liability described in any
15 clause of subsection (b)(2)(B) or described
16 in subsection (b)(4), and

17 “(ii) includes with the application a
18 certification by the plan’s actuary de-
19 scribed in subparagraph (B),

20 the Secretary of the Treasury shall extend the
21 amortization period for the period of time (not
22 in excess of 5 years) specified in the applica-
23 tion. Such extension shall be in addition to any
24 extension under paragraph (2).



1 “(B) CRITERIA.—A certification with re-
2 spect to a multiemployer plan is described in
3 this subparagraph if the plan’s actuary certifies
4 that, based on reasonable assumptions—

5 “(i) absent the extension under sub-
6 paragraph (A), the plan would have an ac-
7 cumulated funding deficiency in the cur-
8 rent plan year or any of the 9 succeeding
9 plan years,

10 “(ii) the plan sponsor has adopted a
11 plan to improve the plan’s funding status,

12 “(iii) the plan is projected to have suf-
13 ficient assets to timely pay expected bene-
14 fits and anticipated expenditures over the
15 amortization period as extended, and

16 “(iv) the notice required under para-
17 graph (3)(A) has been provided.

18 “(2) ADDITIONAL EXTENSION.—

19 “(A) IN GENERAL.—If the plan sponsor of
20 a multiemployer plan submits to the Secretary
21 of the Treasury an application for an extension
22 of the period of years required to amortize any
23 unfunded liability described in any clause of
24 subsection (b)(2)(B) or described in subsection
25 (b)(4), the Secretary of the Treasury may ex-



1 tend the amortization period for a period of
2 time (not in excess of 5 years) if the Secretary
3 of the Treasury makes the determination de-
4 scribed in subparagraph (B). Such extension
5 shall be in addition to any extension under
6 paragraph (1).

7 “(B) DETERMINATION.—The Secretary
8 make grant an extension under subparagraph
9 (A) if the Secretary determines that—

10 “(i) such extension would carry out
11 the purposes of this Act and would provide
12 adequate protection for participants under
13 the plan and their beneficiaries, and

14 “(ii) the failure to permit such exten-
15 sion would—

16 “(I) result in a substantial risk
17 to the voluntary continuation of the
18 plan, or a substantial curtailment of
19 pension benefit levels or employee
20 compensation, and

21 “(II) be adverse to the interests
22 of plan participants in the aggregate.

23 “(C) ACTION BY SECRETARY.—The Sec-
24 retary of the Treasury shall act upon any appli-
25 cation for an extension under this paragraph



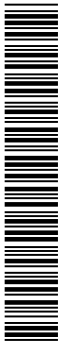
1 within 180 days of the submission of such ap-
2 plication. If the Secretary rejects the applica-
3 tion for an extension under this paragraph, the
4 Secretary shall provide notice to the plan detail-
5 ing the specific reasons for the rejection, includ-
6 ing references to the criteria set forth above.

7 “(3) ADVANCE NOTICE.—

8 “(A) IN GENERAL.—The Secretary of the
9 Treasury shall, before granting an extension
10 under this subsection, require each applicant to
11 provide evidence satisfactory to such Secretary
12 that the applicant has provided notice of the fil-
13 ing of the application for such extension to each
14 affected party (as defined in section
15 4001(a)(21)) with respect to the affected plan.
16 Such notice shall include a description of the
17 extent to which the plan is funded for benefits
18 which are guaranteed under title IV and for
19 benefit liabilities.

20 “(B) CONSIDERATION OF RELEVANT IN-
21 FORMATION.—The Secretary of the Treasury
22 shall consider any relevant information provided
23 by a person to whom notice was given under
24 paragraph (1).”.

25 (b) SHORTFALL FUNDING METHOD.—



1 (1) IN GENERAL.—A multiemployer plan meet-
2 ing the criteria of paragraph (2) may adopt, use, or
3 cease using, the shortfall funding method and such
4 adoption, use, or cessation of use of such method,
5 shall be deemed approved by the Secretary of the
6 Treasury under section 302(d)(1) of the Employee
7 Retirement Income Security Act of 1974 and section
8 412(e)(1) of the Internal Revenue Code of 1986.

9 (2) CRITERIA.—A multiemployer pension plan
10 meets the criteria of this clause if—

11 (A) the plan has not used the shortfall
12 funding method during the 5-year period ending
13 on the day before the date the plan is to use
14 the method under paragraph (1); and

15 (B) the plan is not operating under an am-
16 ortization period extension under section 304(d)
17 of such Act and did not operate under such an
18 extension during such 5-year period.

19 (3) SHORTFALL FUNDING METHOD DEFINED.—
20 For purposes of this subsection, the term “shortfall
21 funding method” means the shortfall funding meth-
22 od described in Treasury Regulations section
23 1.412(c)(1)–2 (26 C.F.R. 1.412(c)(1)–2).

24 (4) BENEFIT RESTRICTIONS TO APPLY.—The
25 benefit restrictions under section 302(c)(7) of such



1 Act and section 412(d)(7) of such Code shall apply
2 during any period a multiemployer plan is on the
3 shortfall funding method pursuant to this sub-
4 section.

5 (5) USE OF SHORTFALL METHOD NOT TO PRE-
6 CLUDE OTHER OPTIONS.—Nothing in this subsection
7 shall be construed to affect a multiemployer plan’s
8 ability to adopt the shortfall funding method with
9 the Secretary’s permission under otherwise applica-
10 ble regulations or to affect a multiemployer plan’s
11 right to change funding methods, with or without
12 the Secretary’s consent, as provided in applicable
13 rules and regulations.

14 (c) CONFORMING AMENDMENTS.—

15 (1) Section 301 of the Employee Retirement In-
16 come Security Act of 1974 (29 U.S.C. 1081) is
17 amended by striking subsection (d).

18 (2) The table of contents in section 1 of such
19 Act (as amended by this Act) is amended by insert-
20 ing after the item relating to section 303 the fol-
21 lowing new item:

“Sec. 304. Minimum funding standards for multiemployer plans.”.

22 (d) EFFECTIVE DATE.—

23 (1) IN GENERAL.—The amendments made by
24 this section shall apply to plan years beginning after
25 2006.



1 (2) SPECIAL RULE FOR CERTAIN AMORTIZATION
2 EXTENSIONS.—If the Secretary of the Treasury
3 grants an extension under section 304 of the Em-
4 ployee Retirement Income Security Act of 1974 and
5 section 412(e) of the Internal Revenue Code of 1986
6 with respect to any application filed with the Sec-
7 retary of the Treasury on or before June 30, 2005,
8 the extension (and any modification thereof) shall be
9 applied and administered under the rules of such
10 sections as in effect before the enactment of this
11 Act, including the use of the rate of interest deter-
12 mined under section 6621(b) of such Code.

13 **SEC. 502. ADDITIONAL FUNDING RULES FOR MULTIEM-**
14 **PLOYER PLANS IN ENDANGERED OR CRIT-**
15 **ICAL STATUS.**

16 (a) IN GENERAL.—Part 3 of subtitle B of title I of
17 the Employee Retirement Income Security Act of 1974 (as
18 amended by the preceding provisions of this Act) is
19 amended by inserting after section 304 the following new
20 section:

21 “ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER
22 PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

23 “SEC. 305. (a) GENERAL RULE.—For purposes of
24 this part, in the case of a multiemployer plan—

25 “(1) if the plan is in endangered status—



1 “(A) the plan sponsor shall adopt and im-
2 plement a funding improvement plan in accord-
3 ance with the requirements of subsection (c),
4 and

5 “(B) the requirements of subsection (d)
6 shall apply during the funding plan adoption
7 period and the funding improvement period,
8 and

9 “(2) if the plan is in critical status—

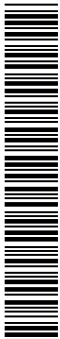
10 “(A) the plan sponsor shall adopt and im-
11 plement a rehabilitation plan in accordance with
12 the requirements of subsection (e), and

13 “(B) the requirements of subsection (f)
14 shall apply during the rehabilitation plan adop-
15 tion period and the rehabilitation period.

16 “(b) DETERMINATION OF ENDANGERED AND CRIT-
17 ICAL STATUS.—For purposes of this section—

18 “(1) ENDANGERED STATUS.—A multiemployer
19 plan is in endangered status for a plan year if, as
20 determined by the plan actuary under paragraph
21 (3), the plan is not in critical status for the plan
22 year and either—

23 “(A) the plan’s funded percentage for such
24 plan year is less than 80 percent, or



1 “(B) the plan has an accumulated funding
2 deficiency for such plan year, or is projected to
3 have such an accumulated funding deficiency
4 for any of the 6 succeeding plan years, taking
5 into account any extension of amortization peri-
6 ods under section 304(d).

7 For purposes of this section, a plan described in
8 subparagraph (B) shall be treated as in seriously en-
9 dangered status.

10 “(2) CRITICAL STATUS.—A multiemployer plan
11 is in critical status for a plan year if, as determined
12 by the plan actuary under paragraph (3), the plan
13 is described in 1 or more of the following subpara-
14 graphs as of the beginning of the plan year:

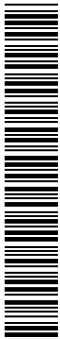
15 “(A) A plan is described in this subpara-
16 graph if—

17 “(i) the funded percentage of the plan
18 is less than 65 percent, and

19 “(ii) the sum of—

20 “(I) the market value of plan as-
21 sets, plus

22 “(II) the present value of the
23 reasonably anticipated employer con-
24 tributions for the current plan year
25 and each of the 5 succeeding plan

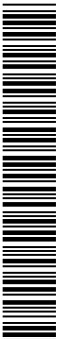


1 years, assuming that the terms of all
2 collective bargaining agreements pur-
3 suant to which the plan is maintained
4 for the current plan year continue in
5 effect for succeeding plan years,
6 is less than the present value of all benefits
7 projected to be payable under the plan dur-
8 ing the current plan year and each of the
9 5 succeeding plan years (plus administra-
10 tive expenses for such plan years).

11 “(B) A plan is described in this subpara-
12 graph if—

13 “(i) the plan has an accumulated
14 funding deficiency for the current plan
15 year, not taking into account any extension
16 of amortization periods under section
17 304(d), or

18 “(ii) the plan is projected to have an
19 accumulated funding deficiency for any of
20 the 3 succeeding plan years (4 succeeding
21 plan years if the funded percentage of the
22 plan is 65 percent or less), not taking into
23 account any extension of amortization peri-
24 ods under section 304(d).



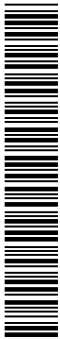
1 “(C) A plan is described in this subpara-
2 graph if—

3 “(i)(I) the plan’s normal cost for the
4 current plan year, plus interest (deter-
5 mined at the rate used for determining
6 costs under the plan) for the current plan
7 year on the amount of unfunded benefit li-
8 abilities under the plan as of the last date
9 of the preceding plan year, exceeds

10 “(II) the present value of the reason-
11 ably anticipated employer contributions for
12 the current plan year,

13 “(ii) the present value of nonforfeit-
14 able benefits of inactive participants is
15 greater than the present value of non-
16 forfeitable benefits of active participants,
17 and

18 “(iii) the plan has an accumulated
19 funding deficiency for the current plan
20 year, or is projected to have such a defi-
21 ciency for any of the 4 succeeding plan
22 years, not taking into account any exten-
23 sion of amortization periods under section
24 304(d).



1 “(D) A plan is described in this subpara-
2 graph if the sum of—

3 “(i) the market value of plan assets,
4 plus

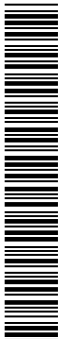
5 “(ii) the present value of the reason-
6 ably anticipated employer contributions for
7 the current plan year and each of the 4
8 succeeding plan years, assuming that the
9 terms of all collective bargaining agree-
10 ments pursuant to which the plan is main-
11 tained for the current plan year continue
12 in effect for succeeding plan years,

13 is less than the present value of all benefits pro-
14 jected to be payable under the plan during the
15 current plan year and each of the 4 succeeding
16 plan years (plus administrative expenses for
17 such plan years).

18 “(3) ANNUAL CERTIFICATION BY PLAN ACTU-
19 ARY.—

20 “(A) IN GENERAL.—During the 90-day pe-
21 riod beginning on the first day of each plan
22 year of a multiemployer plan, the plan actuary
23 shall certify to the Secretary of the Treasury—

24 “(i) whether or not the plan is in en-
25 dangered status for such plan year and

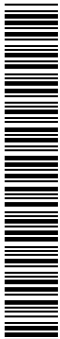


1 whether or not the plan is in critical status
2 for such plan year, and

3 “(ii) in the case of a plan which is in
4 a funding improvement or rehabilitation
5 period, whether or not the plan is making
6 the scheduled progress in meeting the re-
7 quirements of its funding improvement or
8 rehabilitation plan.

9 “(B) ACTUARIAL PROJECTIONS OF ASSETS
10 AND LIABILITIES.—

11 “(i) IN GENERAL.—In making the de-
12 terminations and projections under this
13 subsection, the plan actuary shall make
14 projections required for the current and
15 succeeding plan years, using reasonable ac-
16 tual estimates, assumptions, and meth-
17 ods, of the current value of the assets of
18 the plan and the present value of all liabil-
19 ities to participants and beneficiaries under
20 the plan for the current plan year as of the
21 beginning of such year. The projected
22 present value of liabilities as of the begin-
23 ning of such year shall be determined
24 based on the actuarial statement required
25 under section 103(d) with respect to the



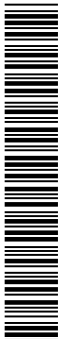
1 most recently filed annual report or the ac-
2 tuarial valuation for the preceding plan
3 year.

4 “(ii) DETERMINATIONS OF FUTURE
5 CONTRIBUTIONS.—Any actuarial projection
6 of plan assets shall assume—

7 “(I) reasonably anticipated em-
8 ployer contributions for the current
9 and succeeding plan years, assuming
10 that the terms of the one or more col-
11 lective bargaining agreements pursu-
12 ant to which the plan is maintained
13 for the current plan year continue in
14 effect for succeeding plan years, or

15 “(II) that employer contributions
16 for the most recent plan year will con-
17 tinue indefinitely, but only if the plan
18 actuary determines there have been no
19 significant demographic changes that
20 would make such assumption unrea-
21 sonable.

22 “(C) PENALTY FOR FAILURE TO SECURE
23 TIMELY ACTUARIAL CERTIFICATION.—Any fail-
24 ure of the plan’s actuary to certify the plan’s
25 status under this subsection by the date speci-



1 fied in subparagraph (A) shall be treated for
2 purposes of section 502(c)(2) as a failure or re-
3 fusar by the plan administrator to file the an-
4 nual report required to be filed with the Sec-
5 retary under section 101(b)(4).

6 “(D) NOTICE.—In any case in which a
7 multiemployer plan is certified to be in endan-
8 gered or critical status under subparagraph (A),
9 the plan sponsor shall, not later than 30 days
10 after the date of the certification, provide notifi-
11 cation of the endangered or critical status to
12 the participants and beneficiaries, the bar-
13 gaining parties, the Pension Benefit Guaranty
14 Corporation, the Secretary of the Treasury, and
15 the Secretary.

16 “(c) FUNDING IMPROVEMENT PLAN MUST BE
17 ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED
18 STATUS.—

19 “(1) IN GENERAL.—In any case in which a
20 multiemployer plan is in endangered status for a
21 plan year, the plan sponsor, in accordance with this
22 subsection—

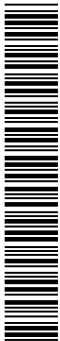
23 “(A) shall adopt a funding improvement
24 plan not later than 240 days following the re-
25 quired date for the actuarial certification of en-



1 dangered status under subsection (b)(3)(A),
2 and

3 “(B) within 30 days after the adoption of
4 the funding improvement plan—

5 “(i) in the case of a plan in seriously
6 endangered status, shall provide to the
7 bargaining parties 1 or more schedules
8 showing revised benefit structures, revised
9 contribution structures, or both, which, if
10 adopted, may reasonably be expected to en-
11 able the multiemployer plan to meet the
12 applicable requirements under paragraph
13 (3) in accordance with the funding im-
14 provement plan, including a description of
15 the reductions in future benefit accruals
16 and increases in contributions that the
17 plan sponsor determines are reasonably
18 necessary to meet the applicable require-
19 ments if the plan sponsor assumes that
20 there are no increases in contributions
21 under the plan other than the increases
22 necessary to meet the applicable require-
23 ments after future benefit accruals have
24 been reduced to the maximum extent per-
25 mitted by law, and



1 “(ii) may, if the plan sponsor deems
2 appropriate, prepare and provide the bar-
3 gaining parties with additional information
4 relating to contribution rates or benefit re-
5 ductions, alternative schedules, or other in-
6 formation relevant to achieving the re-
7 quirements under paragraph (3) in accord-
8 ance with the funding improvement plan.

9 “(2) EXCEPTION FOR YEARS AFTER PROCESS
10 BEGINS.—Paragraph (1) shall not apply to a plan
11 year if such year is in a funding plan adoption pe-
12 riod or funding improvement period by reason of the
13 plan being in endangered status for a preceding plan
14 year. For purposes of this section, such preceding
15 plan year shall be the initial determination year with
16 respect to the funding improvement plan to which it
17 relates.

18 “(3) FUNDING IMPROVEMENT PLAN.—For pur-
19 poses of this section—

20 “(A) IN GENERAL.—A funding improve-
21 ment plan is a plan which consists of the ac-
22 tions, including options or a range of options to
23 be proposed to the bargaining parties, which,
24 under reasonable actuarial assumptions, will re-



1 sult in the plan meeting the requirements of
2 this paragraph.

3 “(B) PLANS OTHER THAN SERIOUSLY EN-
4 DANGERED PLANS.—In the case of plan not in
5 seriously endangered status, the requirements
6 of this paragraph are met if the plan’s funded
7 percentage as of the close of the funding im-
8 provement period exceeds the lesser of 80 per-
9 cent or a percentage equal to the sum of—

10 “(i) such percentage as of the begin-
11 ning of such period, plus

12 “(ii) 10 percent of the percentage
13 under clause (i).

14 “(C) SERIOUSLY ENDANGERED PLANS.—
15 In the case of a plan in seriously endangered
16 status, the requirements of this paragraph are
17 met if—

18 “(i) the plan’s funded percentage as
19 of the close of the funding improvement
20 period equals or exceeds the percentage
21 which is equal to the sum of—

22 “(I) such percentage as of the
23 beginning of such period, plus



1 “(II) 33 percent of the difference
2 between 100 percent and the percent-
3 age under subclause (I), and

4 “(ii) there is no accumulated funding
5 deficiency for any plan year during the
6 funding improvement period (taking into
7 account any extension of amortization peri-
8 ods under section 304(d)).

9 “(4) FUNDING IMPROVEMENT PERIOD.—For
10 purposes of this section—

11 “(A) IN GENERAL.—The funding improve-
12 ment period for any funding improvement plan
13 adopted pursuant to this subsection is the 10-
14 year period beginning on the first day of the
15 first plan year of the multiemployer plan begin-
16 ning after the earlier of—

17 “(i) the second anniversary of the
18 date of the adoption of the funding im-
19 provement plan, or

20 “(ii) the expiration of the collective
21 bargaining agreements in effect on the due
22 date for the actuarial certification of en-
23 dangered status for the initial determina-
24 tion year under subsection (b)(3)(A) and
25 covering, as of such due date, at least 75

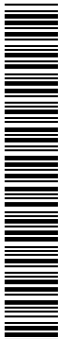


1 percent of the active participants in such
2 multiemployer plan.

3 “(B) COORDINATION WITH CHANGES IN
4 STATUS.—

5 “(i) PLANS NO LONGER IN ENDAN-
6 GERED STATUS.—If the plan’s actuary cer-
7 tifies under subsection (b)(3)(A) for a plan
8 year in any funding plan adoption period
9 or funding improvement period that the
10 plan is no longer in endangered status and
11 is not in critical status, the funding plan
12 adoption period or funding improvement
13 period, whichever is applicable, shall end as
14 of the close of the preceding plan year.

15 “(ii) PLANS IN CRITICAL STATUS.—If
16 the plan’s actuary certifies under sub-
17 section (b)(3)(A) for a plan year in any
18 funding plan adoption period or funding
19 improvement period that the plan is in
20 critical status, the funding plan adoption
21 period or funding improvement period,
22 whichever is applicable, shall end as of the
23 close of the plan year preceding the first
24 plan year in the rehabilitation period with
25 respect to such status.

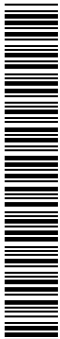


1 “(C) PLANS IN ENDANGERED STATUS AT
2 END OF PERIOD.—If the plan’s actuary certifies
3 under subsection (b)(3)(A) for the first plan
4 year following the close of the period described
5 in subparagraph (A) that the plan is in endan-
6 gered status, the provisions of this subsection
7 and subsection (d) shall be applied as if such
8 first plan year were an initial determination
9 year, except that the plan may not be amended
10 in a manner inconsistent with the funding im-
11 provement plan in effect for the preceding plan
12 year until a new funding improvement plan is
13 adopted.

14 “(5) SPECIAL RULES FOR CERTAIN UNDER-
15 FUNDED PLANS.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), if the funded percentage of
18 a plan in seriously endangered status was 70
19 percent or less as of the beginning of the initial
20 determination year, the following rules shall
21 apply in determining whether the requirements
22 of paragraph (3)(C)(i) are met:

23 “(i) The plan’s funded percentage as
24 of the close of the funding improvement



1 period must equal or exceed a percentage
2 which is equal to the sum of—

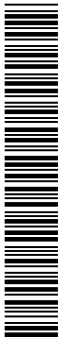
3 “(I) such percentage as of the
4 beginning of such period, plus

5 “(II) 20 percent of the difference
6 between 100 percent and the percent-
7 age under subclause (I).

8 “(ii) The funding improvement period
9 under paragraph (4)(A) shall be 15 years
10 rather than 10 years.

11 “(B) SPECIAL RULES FOR PLANS WITH
12 FUNDED PERCENTAGE OVER 70 PERCENT.—If
13 the funded percentage described in subpara-
14 graph (A) was more than 70 percent but less
15 than 80 percent as of the beginning of the ini-
16 tial determination year—

17 “(i) subparagraph (A) shall apply if
18 the plan’s actuary certifies, within 30 days
19 after the certification under subsection
20 (b)(3)(A) for the initial determination
21 year, that, based on the terms of the plan
22 and the collective bargaining agreements in
23 effect at the time of such certification, the
24 plan is not projected to meet the require-



1 ments of paragraph (3)(C)(i) without re-
2 gard to this paragraph, and

3 “(ii) if there is a certification under
4 clause (i), the plan may, in formulating its
5 funding improvement plan, only take into
6 account the rules of subparagraph (A) for
7 plan years in the funding improvement pe-
8 riod beginning on or before the date on
9 which the last of the collective bargaining
10 agreements described in paragraph
11 (4)(A)(ii) expires.

12 Notwithstanding clause (ii), if for any plan year
13 ending after the date described in clause (ii) the
14 plan actuary certifies (at the time of the annual
15 certification under subsection (b)(3)(A) for such
16 plan year) that, based on the terms of the plan
17 and collective bargaining agreements in effect
18 at the time of that annual certification, the plan
19 is not projected to be able to meet the require-
20 ments of paragraph (3)(C)(i) without regard to
21 this paragraph, the plan may continue to as-
22 sume for such year that the funding improve-
23 ment period is 15 years rather than 10 years.

24 “(6) UPDATES TO FUNDING IMPROVEMENT
25 PLAN AND SCHEDULES.—

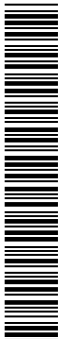


1 “(A) FUNDING IMPROVEMENT PLAN.—The
2 plan sponsor shall annually update the funding
3 improvement plan and shall file the update with
4 the plan’s annual report under section 104.

5 “(B) SCHEDULES.—The plan sponsor may
6 periodically update any schedule of contribution
7 rates provided under this subsection to reflect
8 the experience of the plan, except that the
9 schedule or schedules described in paragraph
10 (1)(B)(i) shall be updated at least once every 3
11 years.

12 “(C) DURATION OF SCHEDULE.—A sched-
13 ule of contribution rates provided by the plan
14 sponsor and relied upon by bargaining parties
15 in negotiating a collective bargaining agreement
16 shall remain in effect for the duration of that
17 collective bargaining agreement.

18 “(7) PENALTY IF NO FUNDING IMPROVEMENT
19 PLAN ADOPTED.—A failure of the plan sponsor to
20 adopt a funding improvement plan by the date speci-
21 fied in paragraph (1)(A) shall be treated for pur-
22 poses of section 502(c)(2) as a failure or refusal by
23 the plan administrator to file the annual report re-
24 quired to be filed with the Secretary under section
25 101(b)(4).



1 “(8) FUNDING PLAN ADOPTION PERIOD.—For
2 purposes of this section, the term ‘funding plan
3 adoption period’ means the period beginning on the
4 date of the certification under subsection (b)(3)(A)
5 for the initial determination year and ending on the
6 day before the first day of the funding improvement
7 period.

8 “(d) RULES FOR OPERATION OF PLAN DURING
9 ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO
10 MEET REQUIREMENTS.—

11 “(1) SPECIAL RULES FOR PLAN ADOPTION PE-
12 RIOD.—During the plan adoption period—

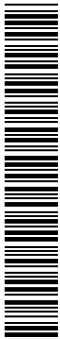
13 “(A) the plan sponsor may not accept a
14 collective bargaining agreement or participation
15 agreement with respect to the multiemployer
16 plan that provides for—

17 “(i) a reduction in the level of con-
18 tributions for any participants,

19 “(ii) a suspension of contributions
20 with respect to any period of service, or

21 “(iii) any new direct or indirect exclu-
22 sion of younger or newly hired employees
23 from plan participation,

24 “(B) no amendment of the plan which in-
25 creases the liabilities of the plan by reason of



1 any increase in benefits, any change in the ac-
2 crual of benefits, or any change in the rate at
3 which benefits become nonforfeitable under the
4 plan may be adopted unless the amendment is
5 required as a condition of qualification under
6 part I of subchapter D of chapter 1 of the In-
7 ternal Revenue Code of 1986 or to comply with
8 other applicable law, and

9 “(C) in the case of a plan in seriously en-
10 dangered status, the plan sponsor shall take all
11 reasonable actions which are consistent with the
12 terms of the plan and applicable law and which
13 are expected, based on reasonable assumptions,
14 to achieve—

15 “(i) an increase in the plan’s funded
16 percentage, and

17 “(ii) postponement of an accumulated
18 funding deficiency for at least 1 additional
19 plan year.

20 Actions under subparagraph (C) include applications
21 for extensions of amortization periods under section
22 304(d), use of the shortfall funding method in mak-
23 ing funding standard account computations, amend-
24 ments to the plan’s benefit structure, reductions in
25 future benefit accruals, and other reasonable actions



1 consistent with the terms of the plan and applicable
2 law.

3 “(2) COMPLIANCE WITH FUNDING IMPROVE-
4 MENT PLAN.—

5 “(A) IN GENERAL.—A plan may not be
6 amended after the date of the adoption of a
7 funding improvement plan under subsection (c)
8 so as to be inconsistent with the funding im-
9 provement plan.

10 “(B) NO REDUCTION IN CONTRIBU-
11 TIONS.—A plan sponsor may not during any
12 funding improvement period accept a collective
13 bargaining agreement or participation agree-
14 ment with respect to the multiemployer plan
15 that provides for—

16 “(i) a reduction in the level of con-
17 tributions for any participants,

18 “(ii) a suspension of contributions
19 with respect to any period of service, or

20 “(iii) any new direct or indirect exclu-
21 sion of younger or newly hired employees
22 from plan participation.

23 “(C) SPECIAL RULES FOR BENEFIT IN-
24 CREASES.—A plan may not be amended after
25 the date of the adoption of a funding improve-



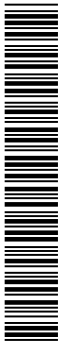
1 ment plan under subsection (c) so as to in-
2 crease benefits, including future benefit accru-
3 als, unless—

4 “(i) in the case of a plan in seriously
5 endangered status, the plan actuary cer-
6 tifies that, after taking into account the
7 benefit increase, the plan is still reasonably
8 expected to meet the requirements under
9 subsection (c)(3) in accordance with the
10 schedule contemplated in the funding im-
11 provement plan, and

12 “(ii) in the case of a plan not in seri-
13 ously endangered status, the actuary cer-
14 tifies that such increase is paid for out of
15 contributions not required by the funding
16 improvement plan to meet the require-
17 ments under subsection (c)(3) in accord-
18 ance with the schedule contemplated in the
19 funding improvement plan.

20 “(3) FAILURE TO MEET REQUIREMENTS.—

21 “(A) IN GENERAL.—Notwithstanding sec-
22 tion 4971(g) of the Internal Revenue Code of
23 1986, if a plan fails to meet the requirements
24 of subsection (c)(3) by the end of the funding
25 improvement period, the plan shall be treated



1 as having an accumulated funding deficiency
2 for purposes of section 4971 of such Code for
3 the last plan year in such period (and each suc-
4 ceeding plan year until such requirements are
5 met) in an amount equal to the greater of the
6 amount of the contributions necessary to meet
7 such requirements or the amount of such accu-
8 mulated funding deficiency without regard to
9 this paragraph.

10 “(B) WAIVER.—In the case of a failure de-
11 scribed in subparagraph (A) which is due to
12 reasonable cause and not to willful neglect, the
13 Secretary of the Treasury may waive part or all
14 of the tax imposed by section 4971 of such
15 Code to the extent that the payment of such tax
16 would be excessive or otherwise inequitable rel-
17 ative to the failure involved.

18 “(e) REHABILITATION PLAN MUST BE ADOPTED
19 FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

20 “(1) IN GENERAL.—In any case in which a
21 multiemployer plan is in critical status for a plan
22 year, the plan sponsor, in accordance with this
23 subsection—

24 “(A) shall adopt a rehabilitation plan not
25 later than 240 days following the required date



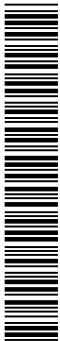
1 for the actuarial certification of critical status
2 under subsection (b)(3)(A), and

3 “(B) within 30 days after the adoption of
4 the rehabilitation plan—

5 “(i) shall provide to the bargaining
6 parties 1 or more schedules showing re-
7 vised benefit structures, revised contribu-
8 tion structures, or both, which, if adopted,
9 may reasonably be expected to enable the
10 multiemployer plan to emerge from critical
11 status in accordance with the rehabilitation
12 plan, and

13 “(ii) may, if the plan sponsor deems
14 appropriate, prepare and provide the bar-
15 gaining parties with additional information
16 relating to contribution rates or benefit re-
17 ductions, alternative schedules, or other in-
18 formation relevant to emerging from crit-
19 ical status in accordance with the rehabili-
20 tation plan.

21 The schedule or schedules described in subparagraph
22 (B)(i) shall reflect reductions in future benefit ac-
23 cruals and increases in contributions that the plan
24 sponsor determines are reasonably necessary to
25 emerge from critical status. One schedule shall be



1 designated as the default schedule and such schedule
2 shall assume that there are no increases in contribu-
3 tions under the plan other than the increases nec-
4 essary to emerge from critical status after future
5 benefit accruals and other benefits (other than bene-
6 fits the reduction or elimination of which are not
7 permitted under section 204(g)) have been reduced
8 to the maximum extent permitted by law.

9 “(2) EXCEPTION FOR YEARS AFTER PROCESS
10 BEGINS.—Paragraph (1) shall not apply to a plan
11 year if such year is in a rehabilitation plan adoption
12 period or rehabilitation period by reason of the plan
13 being in critical status for a preceding plan year.
14 For purposes of this section, such preceding plan
15 year shall be the initial critical year with respect to
16 the rehabilitation plan to which it relates.

17 “(3) REHABILITATION PLAN.—For purposes of
18 this section—

19 “(A) IN GENERAL.—A rehabilitation plan
20 is a plan which consists of—

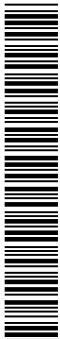
21 “(i) actions which will enable, under
22 reasonable actuarial assumptions, the plan
23 to cease to be in critical status by the end
24 of the rehabilitation period and may in-
25 clude reductions in plan expenditures (in-



1 cluding plan mergers and consolidations),
2 reductions in future benefit accruals or in-
3 creases in contributions, if agreed to by the
4 bargaining parties, or any combination of
5 such actions, or

6 “(ii) if the plan sponsor determines
7 that, based on reasonable actuarial as-
8 sumptions and upon exhaustion of all rea-
9 sonable measures, the plan can not reason-
10 ably be expected to emerge from critical
11 status by the end of the rehabilitation pe-
12 riod, reasonable measures to emerge from
13 critical status at a later time or to forestall
14 possible insolvency (within the meaning of
15 section 4245).

16 Such plan shall include the schedules required
17 to be provided under paragraph (1)(B)(i). If
18 clause (ii) applies, such plan shall set forth the
19 alternatives considered, explain why the plan is
20 not reasonably expected to emerge from critical
21 status by the end of the rehabilitation period,
22 and specify when, if ever, the plan is expected
23 to emerge from critical status in accordance
24 with the rehabilitation plan.



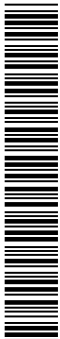
1 “(B) UPDATES TO REHABILITATION PLAN
2 AND SCHEDULES.—

3 “(i) REHABILITATION PLAN.—The
4 plan sponsor shall annually update the re-
5 habilitation plan and shall file the update
6 with the plan’s annual report under section
7 104.

8 “(ii) SCHEDULES.—The plan sponsor
9 may periodically update any schedule of
10 contribution rates provided under this sub-
11 section to reflect the experience of the
12 plan, except that the schedule or schedules
13 described in paragraph (1)(B)(i) shall be
14 updated at least once every 3 years.

15 “(iii) DURATION OF SCHEDULE.—A
16 schedule of contribution rates provided by
17 the plan sponsor and relied upon by bar-
18 gaining parties in negotiating a collective
19 bargaining agreement shall remain in ef-
20 fect for the duration of that collective bar-
21 gaining agreement.

22 “(C) DEFAULT SCHEDULE.—If the collec-
23 tive bargaining agreement providing for con-
24 tributions under a multiemployer plan that was
25 in effect at the time the plan entered critical



1 status expires and, after receiving a schedule
2 from the plan sponsor under paragraph
3 (1)(B)(i), the bargaining parties have not
4 adopted a collective bargaining agreement with
5 terms consistent with such a schedule, the de-
6 fault schedule described in the last sentence of
7 paragraph (1) shall go into effect with respect
8 to those bargaining parties.

9 “(4) REHABILITATION PERIOD.—For purposes
10 of this section—

11 “(A) IN GENERAL.—The rehabilitation pe-
12 riod for a plan in critical status is the 10-year
13 period beginning on the first day of the first
14 plan year of the multiemployer plan following
15 the earlier of—

16 “(i) the second anniversary of the
17 date of the adoption of the rehabilitation
18 plan, or

19 “(ii) the expiration of the collective
20 bargaining agreements in effect on the
21 date of the due date for the actuarial cer-
22 tification of critical status for the initial
23 critical year under subsection (a)(1) and
24 covering, as of such date at least 75 per-



1 cent of the active participants in such mul-
2 tiemployer plan.

3 If a plan emerges from critical status as pro-
4 vided under subparagraph (B) before the end of
5 such 10-year period, the rehabilitation period
6 shall end with the plan year preceding the plan
7 year for which the determination under sub-
8 paragraph (B) is made.

9 “(B) EMERGENCE.—A plan in critical sta-
10 tus shall remain in such status until a plan
11 year for which the plan actuary certifies, in ac-
12 cordance with subsection (b)(3)(A), that the
13 plan is not projected to have an accumulated
14 funding deficiency for the plan year or any of
15 the 9 succeeding plan years, without regard to
16 use of the shortfall method or any extension of
17 amortization periods under section 304(d).

18 “(5) PENALTY IF NO REHABILITATION PLAN
19 ADOPTED.—A failure of a plan sponsor to adopt a
20 rehabilitation plan by the date specified in para-
21 graph (1)(A) shall be treated for purposes of section
22 502(c)(2) as a failure or refusal by the plan admin-
23 istrator to file the annual report required to be filed
24 with the Secretary under section 101(b)(4).



1 “(6) REHABILITATION PLAN ADOPTION PE-
2 RIOD.—For purposes of this section, the term ‘reha-
3 bilitation plan adoption period’ means the period be-
4 ginning on the date of the certification under sub-
5 section (b)(3)(A) for the initial critical year and end-
6 ing on the day before the first day of the rehabilita-
7 tion period.

8 “(7) LIMITATION ON REDUCTION IN RATES OF
9 FUTURE ACCRUALS.—Any reduction in the rate of
10 future accruals under any schedule described in
11 paragraph (1)(B)(i) shall not reduce the rate of fu-
12 ture accruals below—

13 “(A) a monthly benefit (payable as a single
14 life annuity commencing at the participant’s
15 normal retirement age) equal to 1 percent of
16 the contributions required to be made with re-
17 spect to a participant, or the equivalent stand-
18 ard accrual rate for a participant or group of
19 participants under the collective bargaining
20 agreements in effect as of the first day of the
21 initial critical year, or

22 “(B) if lower, the accrual rate under the
23 plan on such first day.

24 The equivalent standard accrual rate shall be deter-
25 mined by the plan sponsor based on the standard or



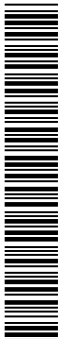
1 average contribution base units which the plan spon-
2 sor determines to be representative for active partici-
3 pants and such other factors as the plan sponsor de-
4 termines to be relevant. Nothing in this paragraph
5 shall be construed as limiting the ability of the plan
6 sponsor to prepare and provide the bargaining par-
7 ties with alternative schedules to the default sched-
8 ule that established lower or higher accrual and con-
9 tribution rates than the rates otherwise described in
10 this paragraph.

11 “(8) EMPLOYER IMPACT.—For the purposes of
12 this section, the plan sponsor shall consider the im-
13 pact of the rehabilitation plan and contribution
14 schedules authorized by this section on bargaining
15 parties with fewer than 500 employees and shall im-
16 plement the plan in a manner that encourages their
17 continued participation in the plan and minimizes fi-
18 nancial harm to employers and their workers.

19 “(f) RULES FOR OPERATION OF PLAN DURING
20 ADOPTION AND REHABILITATION PERIOD.—

21 “(1) COMPLIANCE WITH REHABILITATION
22 PLAN.—

23 “(A) IN GENERAL.—A plan may not be
24 amended after the date of the adoption of a re-



1 habilitation plan under subsection (e) so as to
2 be inconsistent with the rehabilitation plan.

3 “(B) SPECIAL RULES FOR BENEFIT IN-
4 CREASES.—A plan may not be amended after
5 the date of the adoption of a rehabilitation plan
6 under subsection (e) so as to increase benefits,
7 including future benefit accruals, unless the
8 plan actuary certifies that such increase is paid
9 for out of additional contributions not con-
10 templated by the rehabilitation plan, and, after
11 taking into account the benefit increase, the
12 multiemployer plan still is reasonably expected
13 to emerge from critical status by the end of the
14 rehabilitation period on the schedule con-
15 templated in the rehabilitation plan.

16 “(2) RESTRICTION ON LUMP SUMS AND SIMI-
17 LAR BENEFITS.—

18 “(A) IN GENERAL.—Effective on the date
19 the notice of certification of the plan’s critical
20 status for the initial critical year under sub-
21 section (b)(3)(D) is sent, and notwithstanding
22 section 204(g), the plan shall not pay—

23 “(i) any payment, in excess of the
24 monthly amount paid under a single life
25 annuity (plus any social security supple-



1 ments described in the last sentence of sec-
2 tion 204(b)(1)(G)),

3 “(ii) any payment for the purchase of
4 an irrevocable commitment from an insurer
5 to pay benefits, and

6 “(iii) any other payment specified by
7 the Secretary of the Treasury by regula-
8 tions.

9 “(B) EXCEPTION.—Subparagraph (A)
10 shall not apply to a benefit which under section
11 203(e) may be immediately distributed without
12 the consent of the participant or to any makeup
13 payment in the case of a retroactive annuity
14 starting date or any similar payment of benefits
15 owed with respect to a prior period.

16 “(3) ADJUSTMENTS DISREGARDED IN WITH-
17 DRAWAL LIABILITY DETERMINATION.—Any benefit
18 reductions under this subsection shall be disregarded
19 in determining a plan’s unfunded vested benefits for
20 purposes of determining an employer’s withdrawal li-
21 ability under section 4201.

22 “(4) SPECIAL RULES FOR PLAN ADOPTION PE-
23 RIOD.—During the rehabilitation plan adoption
24 period—



1 “(A) the plan sponsor may not accept a
2 collective bargaining agreement or participation
3 agreement with respect to the multiemployer
4 plan that provides for—

5 “(i) a reduction in the level of con-
6 tributions for any participants,

7 “(ii) a suspension of contributions
8 with respect to any period of service, or

9 “(iii) any new direct or indirect exclu-
10 sion of younger or newly hired employees
11 from plan participation, and

12 “(B) no amendment of the plan which in-
13 creases the liabilities of the plan by reason of
14 any increase in benefits, any change in the ac-
15 crual of benefits, or any change in the rate at
16 which benefits become nonforfeitable under the
17 plan may be adopted unless the amendment is
18 required as a condition of qualification under
19 part I of subchapter D of chapter 1 of the In-
20 ternal Revenue Code of 1986 or to comply with
21 other applicable law.

22 “(5) FAILURE TO MEET REQUIREMENTS.—

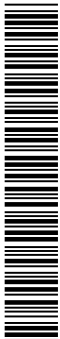
23 “(A) IN GENERAL.—Notwithstanding sec-
24 tion 4971(g) of the Internal Revenue Code of
25 1986, if a plan—



1 “(i) fails to meet the requirements of
2 subsection (e) by the end of the rehabilita-
3 tion period, or

4 “(ii) has received a certification under
5 subsection (b)(3)(A)(ii) for 3 consecutive
6 plan years that the plan is not making the
7 scheduled progress in meeting its require-
8 ments under the rehabilitation plan,
9 the plan shall be treated as having an accumu-
10 lated funding deficiency for purposes of section
11 4971 of such Code for the last plan year in
12 such period (and each succeeding plan year
13 until such requirements are met) in an amount
14 equal to the greater of the amount of the con-
15 tributions necessary to meet such requirements
16 or the amount of such accumulated funding de-
17 ficiency without regard to this paragraph.

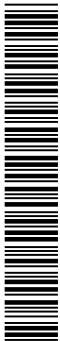
18 “(B) WAIVER.—In the case of a failure de-
19 scribed in subparagraph (A) which is due to
20 reasonable cause and not to willful neglect, the
21 Secretary of the Treasury may waive part or all
22 of the tax imposed by section 4971 of such
23 Code to the extent that the payment of such tax
24 would be excessive or otherwise inequitable rel-
25 ative to the failure involved.



1 “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR
2 DECISIONS.—If, within 60 days of the due date for adop-
3 tion of a funding improvement plan under subsection (c)
4 or a rehabilitation plan under subsection (e), the plan
5 sponsor of a plan in endangered status or a plan in critical
6 status has not agreed on a funding improvement plan or
7 rehabilitation plan, then any member of the board or
8 group that constitutes the plan sponsor may require that
9 the plan sponsor enter into an expedited dispute resolution
10 procedure for the development and adoption of a funding
11 improvement plan or rehabilitation plan.

12 “(h) NONBARGAINED PARTICIPATION.—

13 “(1) BOTH BARGAINED AND NONBARGAINED
14 EMPLOYEE-PARTICIPANTS.—In the case of an em-
15 ployer that contributes to a multiemployer plan with
16 respect to both employees who are covered by one or
17 more collective bargaining agreements and to em-
18 ployees who are not so covered, if the plan is in en-
19 dangered status or in critical status, benefits of and
20 contributions for the nonbargained employees, in-
21 cluding surcharges on those contributions, shall be
22 determined as if those nonbargained employees were
23 covered under the first to expire of the employer’s
24 collective bargaining agreements in effect when the
25 plan entered endangered or critical status.



1 “(2) NONBARGAINED EMPLOYEES ONLY.—In
2 the case of an employer that contributes to a multi-
3 employer plan only with respect to employees who
4 are not covered by a collective bargaining agreement,
5 this section shall be applied as if the employer were
6 the bargaining parties, and its participation agree-
7 ment with the plan was a collective bargaining
8 agreement with a term ending on the first day of the
9 plan year beginning after the employer is provided
10 the schedule or schedules described in subsections
11 (c) and (e).

12 “(3) EMPLOYEES COVERED BY A COLLECTIVE
13 BARGAINING AGREEMENT.—The determination as to
14 whether an employee covered by a collective bar-
15 gaining agreement for purposes of this section shall
16 be made without regard to the special rule in Treas-
17 ury Regulation section 1.410(b)–6(d)(ii)(D).

18 “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-
19 poses of this section—

20 “(1) BARGAINING PARTY.—The term ‘bar-
21 gaining party’ means—

22 “(A)(i) except as provided in clause (ii), an
23 employer who has an obligation to contribute
24 under the plan; or



1 “(ii) in the case of a plan described under
2 section 404(c) of the Internal Revenue Code of
3 1986, or a continuation of such a plan, the as-
4 sociation of employers that is the employee set-
5 tlor of the plan; and

6 “(B) an employee organization which, for
7 purposes of collective bargaining, represents
8 plan participants employed by an employer who
9 has an obligation to contribute under the plan.

10 “(2) FUNDED PERCENTAGE.—The term ‘fund-
11 ed percentage’ means the percentage equal to a
12 fraction—

13 “(A) the numerator of which is the value
14 of the plan’s assets, as determined under sec-
15 tion 304(c)(2), and

16 “(B) the denominator of which is the ac-
17 crued liability of the plan, determined using ac-
18 tuarial assumptions described in section
19 304(c)(3).

20 “(3) ACCUMULATED FUNDING DEFICIENCY.—
21 The term ‘accumulated funding deficiency’ has the
22 meaning given such term in section 304(a).

23 “(4) ACTIVE PARTICIPANT.—The term ‘active
24 participant’ means, in connection with a multiem-



1 ployer plan, a participant who is in covered service
2 under the plan.

3 “(5) INACTIVE PARTICIPANT.—The term ‘inac-
4 tive participant’ means, in connection with a multi-
5 employer plan, a participant, or the beneficiary or
6 alternate payee of a participant, who—

7 “(A) is not in covered service under the
8 plan, and

9 “(B) is in pay status under the plan or has
10 a nonforfeitable right to benefits under the
11 plan.

12 “(6) PAY STATUS.—A person is in pay status
13 under a multiemployer plan if—

14 “(A) at any time during the current plan
15 year, such person is a participant or beneficiary
16 under the plan and is paid an early, late, nor-
17 mal, or disability retirement benefit under the
18 plan (or a death benefit under the plan related
19 to a retirement benefit), or

20 “(B) to the extent provided in regulations
21 of the Secretary of the Treasury, such person
22 is entitled to such a benefit under the plan.

23 “(7) OBLIGATION TO CONTRIBUTE.—The term
24 ‘obligation to contribute’ has the meaning given such
25 term under section 4212(a).



1 “(8) ACTUARIAL METHOD.—Notwithstanding
2 any other provision of this section, the actuary’s de-
3 terminations with respect to a plan’s normal cost,
4 actuarial accrued liability, and improvements in a
5 plan’s funded percentage under this section shall be
6 based upon the unit credit funding method (whether
7 or not that method is used for the plan’s actuarial
8 valuation).

9 “(9) PLAN SPONSOR.—In the case of a plan de-
10 scribed under section 404(c) of the Internal Revenue
11 Code of 1986, or a continuation of such a plan, the
12 term ‘plan sponsor’ means the bargaining parties de-
13 scribed under paragraph (1).”.

14 (b) CAUSE OF ACTION TO COMPEL ADOPTION OF
15 FUNDING IMPROVEMENT OR REHABILITATION PLAN.—
16 Section 502(a) of the Employee Retirement Income Secu-
17 rity Act of 1974 is amended by striking “or” at the end
18 of paragraph (8), by striking the period at the end of para-
19 graph (9) and inserting “; or” and by adding at the end
20 the following:

21 “(10) in the case of a multiemployer plan that
22 has been certified by the actuary to be in endan-
23 gered or critical status under section 305, if the plan
24 sponsor has not adopted a funding improvement or
25 rehabilitation plan under subsection (c) or (e) of



1 that section by the deadline established in that sec-
2 tion, by an employer that has an obligation to con-
3 tribute with respect to the multiemployer plan or an
4 employee organization that represents active partici-
5 pants in the multiemployer plan, for an order com-
6 pelling the plan sponsor to adopt a funding improve-
7 ment or rehabilitation plan.”.

8 (c) 4971 EXCISE TAX INAPPLICABLE.—Section 4971
9 of the Internal Revenue Code of 1986 is amended by re-
10 designating subsection (g) as subsection (h), and inserting
11 after subsection (f) the following:

12 “(g) MULTIEMPLOYER PLANS IN CRITICAL STA-
13 TUS.—No tax shall be imposed under this section for a
14 taxable year with respect to a multiemployer plan if, for
15 the plan years ending with or within the taxable year, the
16 plan is in critical status pursuant to section 305 of the
17 Employee Retirement Income Security Act of 1974. This
18 subsection shall only apply if the plan adopts a rehabilita-
19 tion plan in accordance with section 305(e) of such Act
20 and complies with such rehabilitation plan (and any modi-
21 fications of the plan) and shall not apply if an excise tax
22 is required to be imposed under this section by reason of
23 a violation of such section 305.”.

24 (d) NO ADDITIONAL CONTRIBUTIONS REQUIRED.—

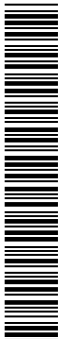


1 (1) Section 302(b) of the Employee Retirement
2 Income Security Act of 1974, as amended by this
3 Act , is amended by adding at the end the following
4 new paragraph:

5 “(3) MULTIEMPLOYER PLANS IN CRITICAL STA-
6 TUS.—Subparagraph (A) shall not apply in the case
7 of a multiemployer plan for any plan year in which
8 the plan is in critical status pursuant to section 305.
9 This paragraph shall only apply if the plan adopts
10 a rehabilitation plan in accordance with section
11 305(e) and complies with such rehabilitation plan
12 (and any modifications of the plan).”.

13 (2) Section 412(c) of the Internal Revenue
14 Code of 1986, as amended by this Act, is amended
15 by adding at the end the following new paragraph:

16 “(3) MULTIEMPLOYER PLANS IN CRITICAL STA-
17 TUS.—Subparagraph (A) shall not apply in the case
18 of a multiemployer plan for any plan year in which
19 the plan is in critical status pursuant to section 305
20 of the Employee Retirement Income Security Act of
21 1974. This paragraph shall only apply if the plan
22 adopts a rehabilitation plan in accordance with sec-
23 tion 305(e) of such Act and complies with such re-
24 habilitation plan (and any modifications of the
25 plan).”.



1 (e) CONFORMING AMENDMENT.—The table of con-
2 tents in section 1 of such Act (as amended by the pre-
3 ceding provisions of this Act) is amended by inserting
4 after the item relating to section 304 the following new
5 item:

“Sec. 305. Additional funding rules for multiemployer plans in endangered sta-
tus or critical status.”.

6 (f) EFFECTIVE DATES.—

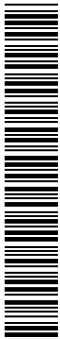
7 (1) IN GENERAL.—The amendment made by
8 this section shall apply with respect to plan years be-
9 ginning after 2006.

10 (2) SPECIAL RULE FOR CERTAIN RESTORED
11 BENEFITS.—In the case of a multiemployer plan—

12 (A) with respect to which benefits were re-
13 duced pursuant to a plan amendment adopted
14 on or after January 1, 2002, and before June
15 30, 2005, and

16 (B) which, pursuant to the plan document,
17 the trust agreement, or a formal written com-
18 munication from the plan sponsor to partici-
19 pants provided before June 30, 2005, provided
20 for the restoration of such benefits,

21 the amendments made by this section shall not apply
22 to such benefit restorations to the extent that any
23 restriction on the providing or accrual of such bene-



1 fits would otherwise apply by reason of such amend-
2 ments.

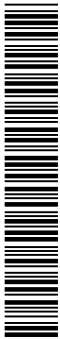
3 **SEC. 503. MEASURES TO FORESTALL INSOLVENCY OF MUL-**
4 **TIEMPLOYER PLANS.**

5 (a) ADVANCE DETERMINATION OF IMPENDING IN-
6 SOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the
7 Employee Retirement Income Security Act of 1974 (29
8 U.S.C. 1426(d)(1)) is amended—

9 (1) by striking “3 plan years” the second place
10 it appears and inserting “5 plan years”; and

11 (2) by adding at the end the following new sen-
12 tence: “If the plan sponsor makes such a determina-
13 tion that the plan will be insolvent in any of the next
14 5 plan years, the plan sponsor shall make the com-
15 parison under this paragraph at least annually until
16 the plan sponsor makes a determination that the
17 plan will not be insolvent in any of the next 5 plan
18 years.”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 this section shall apply with respect to determinations
21 made in plan years beginning after 2006.



1 **SEC. 504. SPECIAL RULE FOR CERTAIN BENEFITS FUNDED**
2 **UNDER AN AGREEMENT APPROVED BY THE**
3 **PENSION BENEFIT GUARANTY CORPORA-**
4 **TION.**

5 In the case of a multiemployer plan that is a party
6 to an agreement that was approved by the Pension Benefit
7 Guaranty Corporation prior to June 30, 2005, and that—

8 (1) increases benefits, and

9 (2) provides for special withdrawal liability
10 rules under section 4203(f) of the Employee Retirement
11 Income Security Act of 1974 (29 U.S.C.
12 1383),

13 the amendments made by sections 201, 202, 211, and 212
14 of this Act shall not apply to the benefit increases under
15 any plan amendment adopted prior to June 30, 2005, that
16 are funded pursuant to such agreement if the plan is fund-
17 ed in compliance with such agreement (and any amend-
18 ments thereto).

19 **SEC. 505. WITHDRAWAL LIABILITY REFORMS.**

20 (a) REPEAL OF LIMITATION ON WITHDRAWAL LI-
21 ABILITY OF INSOLVENT EMPLOYERS.—

22 (1) IN GENERAL.—Subsections (b) and (d) of
23 section 4225 of the Employee Retirement Income
24 Security Act of 1974 (29 U.S.C. 1405) are repealed.



1 (2) CONFORMING AMENDMENTS.—Subsections
2 (c) and (e) of section 4225 of such Act are redesign-
3 nated as subsections (b) and (c), respectively.

4 (3) EFFECTIVE DATE.—The amendments made
5 by this section shall apply with respect to sales oc-
6 ccurring on or after January 1, 2006.

7 (b) WITHDRAWAL LIABILITY CONTINUES IF WORK
8 CONTRACTED OUT.—

9 (1) IN GENERAL.—Clause (i) of section
10 4205(b)(2)(A) of such Act (29 U.S.C.
11 1385(b)(2)(A)) is amended by inserting “or to an
12 entity or entities owned or controlled by the em-
13 ployer” after “to another location”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by this subsection shall apply with respect to work
16 transferred on or after the date of the enactment of
17 this Act.

18 (c) APPLICATION OF FORGIVENESS RULE TO PLANS
19 PRIMARILY COVERING EMPLOYEES IN THE BUILDING
20 AND CONSTRUCTION.—

21 (1) IN GENERAL.—Section 4210(b) of such Act
22 (29 U.S.C. 1390(b)) is amended—

23 (A) by striking paragraph (1); and



1 (B) by redesignating paragraphs (2)
2 through (4) as paragraphs (1) through (3), re-
3 spectively.

4 (2) EFFECTIVE DATE.—The amendments made
5 by this subsection shall apply with respect to plan
6 withdrawals occurring on or after January 1, 2006.

7 **SEC. 506. SPECIAL RULES FOR MULTIPLE EMPLOYER**
8 **PLANS OF CERTAIN COOPERATIVES.**

9 (a) GENERAL RULE.—Except as provided in this sec-
10 tion, if a plan in existence on July 26, 2005, was an eligi-
11 ble cooperative plan for its plan year which includes such
12 date, the amendments made by this subtitle and subtitle
13 B shall not apply to plan years beginning before the earlier
14 of—

15 (1) the first plan year for which the plan ceases
16 to be an eligible cooperative plan, or

17 (2) January 1, 2017.

18 (b) ELIGIBLE COOPERATIVE PLANS.—For purposes
19 of this section, the term “eligible cooperative plan” means
20 a plan which is maintained by more than 1 employer and
21 at least 85 percent of the employers are—

22 (1) rural cooperatives (as defined in section
23 401(k)(7)(B) of the Internal Revenue Code of 1986
24 without regard to clause (iv) thereof),



1 (2) rural telephone cooperative associations de-
2 scribed in section 3(40)(B)(v) of the Employee Re-
3 tirement Income Security Act of 1974 which is not
4 described in paragraph (1), or

5 (3) organizations described in section 1381(a)
6 of such Code more than 50 percent of the ownership
7 or capital and profits interests of which are held—

8 (A) by producers of agricultural products,
9 or

10 (B) organizations described in section
11 1381(a) of such Code meeting the requirements
12 of subparagraph (A).

13 **PART II—AMENDMENTS TO INTERNAL REVENUE**

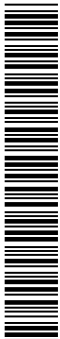
14 **CODE OF 1986**

15 **SEC. 511. FUNDING RULES FOR MULTIEMPLOYER DEFINED** 16 **BENEFIT PLANS.**

17 (a) IN GENERAL.—Subpart A of part III of sub-
18 chapter D of chapter 1 of the Internal Revenue Code of
19 1986 (as added by this Act) is amended by inserting after
20 section 430 the following new section:

21 **“SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEM-** 22 **PLOYER PLANS.**

23 “(a) IN GENERAL.—For purposes of section 412, the
24 accumulated funding deficiency of a multiemployer plan
25 for any plan year is—



1 “(1) except as provided in paragraph (2), the
2 amount, determined as of the end of the plan year,
3 equal to the excess (if any) of the total charges to
4 the funding standard account of the plan for all plan
5 years (beginning with the first plan year for which
6 this part applies to the plan) over the total credits
7 to such account for such years, and

8 “(2) if the multiemployer plan is in reorganiza-
9 tion for any plan year, the accumulated funding de-
10 ficiency of the plan determined under section 4243
11 of the Employee Retirement Income Security Act of
12 1974.

13 “(b) FUNDING STANDARD ACCOUNT.—

14 “(1) ACCOUNT REQUIRED.—Each multiem-
15 ployer plan to which this part applies shall establish
16 and maintain a funding standard account. Such ac-
17 count shall be credited and charged solely as pro-
18 vided in this section.

19 “(2) CHARGES TO ACCOUNT.—For a plan year,
20 the funding standard account shall be charged with
21 the sum of—

22 “(A) the normal cost of the plan for the
23 plan year,



1 “(B) the amounts necessary to amortize in
2 equal annual installments (until fully amor-
3 tized)—

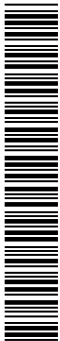
4 “(i) separately, with respect to each
5 plan year, the net increase (if any) in un-
6 funded past service liability under the plan
7 arising from plan amendments adopted in
8 such year, over a period of 15 plan years,

9 “(ii) separately, with respect to each
10 plan year, the net experience loss (if any)
11 under the plan, over a period of 15 plan
12 years, and

13 “(iii) separately, with respect to each
14 plan year, the net loss (if any) resulting
15 from changes in actuarial assumptions
16 used under the plan, over a period of 15
17 plan years,

18 “(C) the amount necessary to amortize
19 each waived funding deficiency (within the
20 meaning of section 412(d)(3)) for each prior
21 plan year in equal annual installments (until
22 fully amortized) over a period of 15 plan years,

23 “(D) the amount necessary to amortize in
24 equal annual installments (until fully amor-
25 tized) over a period of 5 plan years any amount



1 credited to the funding standard account under
2 section 412(b)(3)(D) (as in effect on the day
3 before the date of the enactment of the Pension
4 Security and Transparency Act of 2005), and

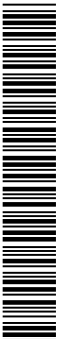
5 “(E) the amount necessary to amortize in
6 equal annual installments (until fully amor-
7 tized) over a period of 20 years the contribu-
8 tions which would be required to be made under
9 the plan but for the provisions of section
10 412(c)(7)(A)(i)(I) (as in effect on the day be-
11 fore the date of the enactment of the Pension
12 Security and Transparency Act of 2005).

13 “(3) CREDITS TO ACCOUNT.—For a plan year,
14 the funding standard account shall be credited with
15 the sum of—

16 “(A) the amount considered contributed by
17 the employer to or under the plan for the plan
18 year,

19 “(B) the amount necessary to amortize in
20 equal annual installments (until fully amor-
21 tized)—

22 “(i) separately, with respect to each
23 plan year, the net decrease (if any) in un-
24 funded past service liability under the plan



1 arising from plan amendments adopted in
2 such year, over a period of 15 plan years,
3 “(ii) separately, with respect to each
4 plan year, the net experience gain (if any)
5 under the plan, over a period of 15 plan
6 years, and

7 “(iii) separately, with respect to each
8 plan year, the net gain (if any) resulting
9 from changes in actuarial assumptions
10 used under the plan, over a period of 15
11 plan years,

12 “(C) the amount of the waived funding de-
13 ficiency (within the meaning of section
14 412(d)(3)) for the plan year, and

15 “(D) in the case of a plan year for which
16 the accumulated funding deficiency is deter-
17 mined under the funding standard account if
18 such plan year follows a plan year for which
19 such deficiency was determined under the alter-
20 native minimum funding standard under section
21 412(g) (as in effect on the day before the date
22 of the enactment of the Pension Security and
23 Transparency Act of 2005), the excess (if any)
24 of any debit balance in the funding standard
25 account (determined without regard to this sub-



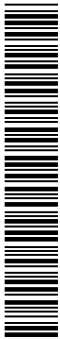
1 paragraph) over any debit balance in the alter-
2 native minimum funding standard account.

3 “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-
4 ORTIZED TO PLAN YEARS BEFORE 2007.—In the case
5 of any amount amortized under section 412(b) (as
6 in effect on the day before the date of the enactment
7 of the Pension Security and Transparency Act of
8 2005) over any period beginning with a plan year
9 beginning before 2007, in lieu of the amortization
10 described in paragraphs (2)(B) and (3)(B), such
11 amount shall continue to be amortized under such
12 section as so in effect.

13 “(5) COMBINING AND OFFSETTING AMOUNTS
14 TO BE AMORTIZED.—Under regulations prescribed
15 by the Secretary, amounts required to be amortized
16 under paragraph (2) or paragraph (3), as the case
17 may be—

18 “(A) may be combined into one amount
19 under such paragraph to be amortized over a
20 period determined on the basis of the remaining
21 amortization period for all items entering into
22 such combined amount, and

23 “(B) may be offset against amounts re-
24 quired to be amortized under the other such
25 paragraph, with the resulting amount to be am-



1 ortized over a period determined on the basis of
2 the remaining amortization periods for all items
3 entering into whichever of the two amounts
4 being offset is the greater.

5 “(6) INTEREST.—The funding standard ac-
6 count (and items therein) shall be charged or cred-
7 ited (as determined under regulations prescribed by
8 the Secretary of the Treasury) with interest at the
9 appropriate rate consistent with the rate or rates of
10 interest used under the plan to determine costs.

11 “(7) SPECIAL RULES RELATING TO CHARGES
12 AND CREDITS TO FUNDING STANDARD ACCOUNT.—
13 For purposes of this part—

14 “(A) WITHDRAWAL LIABILITY.—Any
15 amount received by a multiemployer plan in
16 payment of all or part of an employer’s with-
17 drawal liability under part 1 of subtitle E of
18 title IV of the Employee Retirement Income Se-
19 curity Act of 1974 shall be considered an
20 amount contributed by the employer to or
21 under the plan. The Secretary may prescribe by
22 regulation additional charges and credits to a
23 multiemployer plan’s funding standard account
24 to the extent necessary to prevent withdrawal li-



1 ability payments from being unduly reflected as
2 advance funding for plan liabilities.

3 “(B) ADJUSTMENTS WHEN A MULTITEM-
4 PLOYER PLAN LEAVES REORGANIZATION.—If a
5 multiemployer plan is not in reorganization in
6 the plan year but was in reorganization in the
7 immediately preceding plan year, any balance in
8 the funding standard account at the close of
9 such immediately preceding plan year—

10 “(i) shall be eliminated by an offset-
11 ting credit or charge (as the case may be),
12 but

13 “(ii) shall be taken into account in
14 subsequent plan years by being amortized
15 in equal annual installments (until fully
16 amortized) over 30 plan years.

17 The preceding sentence shall not apply to the
18 extent of any accumulated funding deficiency
19 under section 4243(a) of such Act as of the end
20 of the last plan year that the plan was in reor-
21 ganization.

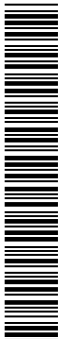
22 “(C) PLAN PAYMENTS TO SUPPLEMENTAL
23 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT
24 FUND.—Any amount paid by a plan during a
25 plan year to the Pension Benefit Guaranty Cor-



poration pursuant to section 4222 of such Act or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

“(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer’s withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

“(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred



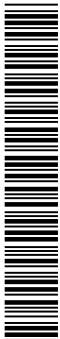
1 (and paragraph (2)(B)(ii) shall not apply to the
2 amount so charged).

3 “(F) FINANCIAL ASSISTANCE.—Any
4 amount of any financial assistance from the
5 Pension Benefit Guaranty Corporation to any
6 plan, and any repayment of such amount, shall
7 be taken into account under this section and
8 section 412 in such manner as is determined by
9 the Secretary.

10 “(G) SHORT-TERM BENEFITS.—To the ex-
11 tent that any plan amendment increases the un-
12 funded past service liability under the plan by
13 reason of an increase in benefits which are pay-
14 able under the terms of the plan for a period
15 that does not exceed 14 years from the effective
16 date of the amendment, paragraph (2)(B)(i)
17 shall be applied separately with respect to such
18 increase in unfunded past service liability by
19 substituting the number of years of the period
20 during which such benefits are payable for ‘15’.

21 “(c) ADDITIONAL RULES.—

22 “(1) DETERMINATIONS TO BE MADE UNDER
23 FUNDING METHOD.—For purposes of this part, nor-
24 mal costs, accrued liability, past service liabilities,
25 and experience gains and losses shall be determined



1 under the funding method used to determine costs
2 under the plan.

3 “(2) VALUATION OF ASSETS.—

4 “(A) IN GENERAL.—For purposes of this
5 part, the value of the plan’s assets shall be de-
6 termined on the basis of any reasonable actu-
7 arial method of valuation which takes into ac-
8 count fair market value and which is permitted
9 under regulations prescribed by the Secretary.

10 “(B) ELECTION WITH RESPECT TO
11 BONDS.—The value of a bond or other evidence
12 of indebtedness which is not in default as to
13 principal or interest may, at the election of the
14 plan administrator, be determined on an amor-
15 tized basis running from initial cost at purchase
16 to par value at maturity or earliest call date.
17 Any election under this subparagraph shall be
18 made at such time and in such manner as the
19 Secretary shall by regulations provide, shall
20 apply to all such evidences of indebtedness, and
21 may be revoked only with the consent of the
22 Secretary.

23 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
24 SONABLE.—For purposes of this section, all costs, li-
25 abilities, rates of interest, and other factors under



1 the plan shall be determined on the basis of actu-
2 arial assumptions and methods—

3 “(A) each of which is reasonable (taking
4 into account the experience of the plan and rea-
5 sonable expectations), and

6 “(B) which, in combination, offer the actu-
7 ary’s best estimate of anticipated experience
8 under the plan.

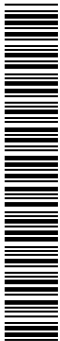
9 “(4) TREATMENT OF CERTAIN CHANGES AS EX-
10 PERIENCE GAIN OR LOSS.—For purposes of this sec-
11 tion, if—

12 “(A) a change in benefits under the Social
13 Security Act or in other retirement benefits cre-
14 ated under Federal or State law, or

15 “(B) a change in the definition of the term
16 ‘wages’ under section 3121, or a change in the
17 amount of such wages taken into account under
18 regulations prescribed for purposes of section
19 401(a)(5),

20 results in an increase or decrease in accrued liability
21 under a plan, such increase or decrease shall be
22 treated as an experience loss or gain.

23 “(5) FULL FUNDING.—If, as of the close of a
24 plan year, a plan would (without regard to this para-



1 graph) have an accumulated funding deficiency in
2 excess of the full funding limitation—

3 “(A) the funding standard account shall be
4 credited with the amount of such excess, and

5 “(B) all amounts described in subpara-
6 graphs (B), (C), and (D) of subsection (b) (2)
7 and subparagraph (B) of subsection (b)(3)
8 which are required to be amortized shall be con-
9 sidered fully amortized for purposes of such
10 subparagraphs.

11 “(6) FULL-FUNDING LIMITATION.—

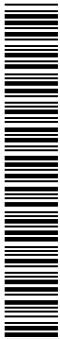
12 “(A) IN GENERAL.—For purposes of para-
13 graph (5), the term ‘full-funding limitation’
14 means the excess (if any) of—

15 “(i) the accrued liability (including
16 normal cost) under the plan (determined
17 under the entry age normal funding meth-
18 od if such accrued liability cannot be di-
19 rectly calculated under the funding method
20 used for the plan), over

21 “(ii) the lesser of—

22 “(I) the fair market value of the
23 plan’s assets, or

24 “(II) the value of such assets de-
25 termined under paragraph (2).



1 “(B) MINIMUM AMOUNT.—

2 “(i) IN GENERAL.—In no event shall
3 the full-funding limitation determined
4 under subparagraph (A) be less than the
5 excess (if any) of—

6 “(I) 90 percent of the current li-
7 ability of the plan (including the ex-
8 pected increase in current liability due
9 to benefits accruing during the plan
10 year), over

11 “(II) the value of the plan’s as-
12 sets determined under paragraph (2).

13 “(ii) ASSETS.—For purposes of clause
14 (i), assets shall not be reduced by any
15 credit balance in the funding standard ac-
16 count.

17 “(C) FULL FUNDING LIMITATION.—For
18 purposes of this paragraph, unless otherwise
19 provided by the plan, the accrued liability under
20 a multiemployer plan shall not include benefits
21 which are not nonforfeitable under the plan
22 after the termination of the plan (taking into
23 consideration section 411(d)(3)).

24 “(D) CURRENT LIABILITY.—For purposes
25 of this paragraph—



1 “(i) IN GENERAL.—The term ‘current
2 liability’ means all liabilities to employees
3 and their beneficiaries under the plan.

4 “(ii) TREATMENT OF UNPREDICTABLE
5 CONTINGENT EVENT BENEFITS.—For pur-
6 poses of clause (i), any benefit contingent
7 on an event other than—

8 “(I) age, service, compensation,
9 death, or disability, or

10 “(II) an event which is reason-
11 ably and reliably predictable (as deter-
12 mined by the Secretary),

13 shall not be taken into account until the
14 event on which the benefit is contingent oc-
15 curs.

16 “(iii) INTEREST RATE USED.—The
17 rate of interest used to determine current
18 liability under this paragraph shall be the
19 rate of interest determined under subpara-
20 graph (E).

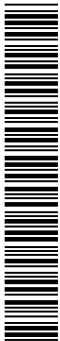
21 “(iv) MORTALITY TABLES.—

22 “(I) COMMISSIONERS’ STANDARD
23 TABLE.—In the case of plan years be-
24 ginning before the first plan year to
25 which the first tables prescribed under



1 subclause (II) apply, the mortality
2 table used in determining current li-
3 ability under this paragraph shall be
4 the table prescribed by the Secretary
5 which is based on the prevailing com-
6 missioners' standard table (described
7 in section 807(d)(5)(A)) used to de-
8 termine reserves for group annuity
9 contracts issued on January 1, 1993.

10 “(II) SECRETARIAL AUTHOR-
11 ITY.—The Secretary may by regula-
12 tion prescribe for plan years beginning
13 after December 31, 1999, mortality
14 tables to be used in determining cur-
15 rent liability under this subsection.
16 Such tables shall be based upon the
17 actual experience of pension plans and
18 projected trends in such experience.
19 In prescribing such tables, the Sec-
20 retary shall take into account results
21 of available independent studies of
22 mortality of individuals covered by
23 pension plans.



1 “(v) SEPARATE MORTALITY TABLES
2 FOR THE DISABLED.—Notwithstanding
3 clause (iv)—

4 “(I) IN GENERAL.—The Sec-
5 retary shall establish mortality tables
6 which may be used (in lieu of the ta-
7 bles under clause (iv)) to determine
8 current liability under this subsection
9 for individuals who are entitled to
10 benefits under the plan on account of
11 disability. The Secretary shall estab-
12 lish separate tables for individuals
13 whose disabilities occur in plan years
14 beginning before January 1, 1995,
15 and for individuals whose disabilities
16 occur in plan years beginning on or
17 after such date.

18 “(II) SPECIAL RULE FOR DIS-
19 ABILITIES OCCURRING AFTER 1994.—
20 In the case of disabilities occurring in
21 plan years beginning after December
22 31, 1994, the tables under subclause
23 (I) shall apply only with respect to in-
24 dividuals described in such subclause
25 who are disabled within the meaning



1 of title II of the Social Security Act
2 and the regulations thereunder.

3 “(vi) PERIODIC REVIEW.—The Sec-
4 retary shall periodically (at least every 5
5 years) review any tables in effect under
6 this subparagraph and shall, to the extent
7 such Secretary determines necessary, by
8 regulation update the tables to reflect the
9 actual experience of pension plans and pro-
10 jected trends in such experience.

11 “(E) REQUIRED CHANGE OF INTEREST
12 RATE.—For purposes of determining a plan’s
13 current liability for purposes of this
14 paragraph—

15 “(i) IN GENERAL.—If any rate of in-
16 terest used under the plan under sub-
17 section (b)(6) to determine cost is not
18 within the permissible range, the plan shall
19 establish a new rate of interest within the
20 permissible range.

21 “(ii) PERMISSIBLE RANGE.—For pur-
22 poses of this subparagraph—

23 “(I) IN GENERAL.—Except as
24 provided in subclause (II), the term
25 ‘permissible range’ means a rate of in-



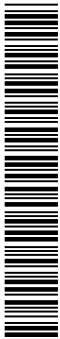
1 terest which is not more than 5 per-
2 cent above, and not more than 10 per-
3 cent below, the weighted average of
4 the rates of interest on 30-year Treas-
5 ury securities during the 4-year period
6 ending on the last day before the be-
7 ginning of the plan year.

8 “(II) SECRETARIAL AUTHOR-
9 ITY.—If the Secretary finds that the
10 lowest rate of interest permissible
11 under subclause (I) is unreasonably
12 high, the Secretary may prescribe a
13 lower rate of interest, except that
14 such rate may not be less than 80
15 percent of the average rate deter-
16 mined under such subclause.

17 “(iii) ASSUMPTIONS.—Notwith-
18 standing paragraph (3)(A), the interest
19 rate used under the plan shall be—

20 “(I) determined without taking
21 into account the experience of the
22 plan and reasonable expectations, but

23 “(II) consistent with the assump-
24 tions which reflect the purchase rates
25 which would be used by insurance



1 companies to satisfy the liabilities
2 under the plan.

3 “(7) ANNUAL VALUATION.—

4 “(A) IN GENERAL.—For purposes of this
5 section, a determination of experience gains and
6 losses and a valuation of the plan’s liability
7 shall be made not less frequently than once
8 every year, except that such determination shall
9 be made more frequently to the extent required
10 in particular cases under regulations prescribed
11 by the Secretary.

12 “(B) VALUATION DATE.—

13 “(i) CURRENT YEAR.—Except as pro-
14 vided in clause (ii), the valuation referred
15 to in subparagraph (A) shall be made as of
16 a date within the plan year to which the
17 valuation refers or within one month prior
18 to the beginning of such year.

19 “(ii) USE OF PRIOR YEAR VALU-
20 ATION.—The valuation referred to in sub-
21 paragraph (A) may be made as of a date
22 within the plan year prior to the year to
23 which the valuation refers if, as of such
24 date, the value of the assets of the plan are
25 not less than 100 percent of the plan’s cur-



1 rent liability (as defined in paragraph
2 (6)(D) without regard to clause (iv) there-
3 of).

4 “(iii) ADJUSTMENTS.—Information
5 under clause (ii) shall, in accordance with
6 regulations, be actuarially adjusted to re-
7 flect significant differences in participants.

8 “(iv) LIMITATION.—A change in fund-
9 ing method to use a prior year valuation,
10 as provided in clause (ii), may not be made
11 unless as of the valuation date within the
12 prior plan year, the value of the assets of
13 the plan are not less than 125 percent of
14 the plan’s current liability (as defined in
15 paragraph (6)(D) without regard to clause
16 (iv) thereof).

17 “(8) TIME WHEN CERTAIN CONTRIBUTIONS
18 DEEMED MADE.—For purposes of this section, any
19 contributions for a plan year made by an employer
20 after the last day of such plan year, but not later
21 than two and one-half months after such day, shall
22 be deemed to have been made on such last day. For
23 purposes of this subparagraph, such two and one-
24 half month period may be extended for not more



1 than six months under regulations prescribed by the
2 Secretary.

3 “(d) EXTENSION OF AMORTIZATION PERIODS FOR
4 MULTIEMPLOYER PLANS.—

5 “(1) AUTOMATIC EXTENSION UPON APPLICA-
6 TION BY CERTAIN PLANS.—

7 “(A) IN GENERAL.—If the plan sponsor of
8 a multiemployer plan—

9 “(i) submits to the Secretary an appli-
10 cation for an extension of the period of
11 years required to amortize any unfunded
12 liability described in any clause of sub-
13 section (b)(2)(B) or described in subsection
14 (b)(4), and

15 “(ii) includes with the application a
16 certification by the plan’s actuary de-
17 scribed in subparagraph (B),

18 the Secretary shall extend the amortization pe-
19 riod for the period of time (not in excess of 5
20 years) specified in the application. Such exten-
21 sion shall be in addition to any extension under
22 paragraph (2).

23 “(B) CRITERIA.—A certification with re-
24 spect to a multiemployer plan is described in



1 this subparagraph if the plan’s actuary certifies
2 that, based on reasonable assumptions—

3 “(i) absent the extension under sub-
4 paragraph (A), the plan would have an ac-
5 cumulated funding deficiency in the cur-
6 rent plan year or any of the 9 succeeding
7 plan years,

8 “(ii) the plan sponsor has adopted a
9 plan to improve the plan’s funding status,

10 “(iii) the plan is projected to have suf-
11 ficient assets to timely pay expected bene-
12 fits and anticipated expenditures over the
13 amortization period as extended, and

14 “(iv) the notice required under para-
15 graph (3)(A) has been provided.

16 “(2) ADDITIONAL EXTENSION.—

17 “(A) IN GENERAL.—If the plan sponsor of
18 a multiemployer plan submits to the Secretary
19 an application for an extension of the period of
20 years required to amortize any unfunded liabil-
21 ity described in any clause of subsection
22 (b)(2)(B) or described in subsection (b)(4), the
23 Secretary may extend the amortization period
24 for a period of time (not in excess of 5 years)
25 if the Secretary of the Treasury makes the de-



1 termination described in subparagraph (B).
2 Such extension shall be in addition to any ex-
3 tension under paragraph (1).

4 “(B) DETERMINATION.—The Secretary
5 may grant an extension under subparagraph
6 (A) if the Secretary determines that—

7 “(i) such extension would carry out
8 the purposes of this Act and would provide
9 adequate protection for participants under
10 the plan and their beneficiaries, and

11 “(ii) the failure to permit such exten-
12 sion would—

13 “(I) result in a substantial risk
14 to the voluntary continuation of the
15 plan, or a substantial curtailment of
16 pension benefit levels or employee
17 compensation, and

18 “(II) be adverse to the interests
19 of plan participants in the aggregate.

20 “(C) ACTION BY SECRETARY.—The Sec-
21 retary shall act upon any application for an ex-
22 tension under this paragraph within 180 days
23 of the submission of such application. If the
24 Secretary rejects the application for an exten-
25 sion under this paragraph, the Secretary shall



1 provide notice to the plan detailing the specific
2 reasons for the rejection, including references to
3 the criteria set forth above.

4 “(3) ADVANCE NOTICE.—

5 “(A) IN GENERAL.—The Secretary shall,
6 before granting an extension under this sub-
7 section, require each applicant to provide evi-
8 dence satisfactory to such Secretary that the
9 applicant has provided notice of the filing of the
10 application for such extension to each affected
11 party (as defined in section 4001(a)(21) of the
12 Employee Retirement Income Security Act of
13 1974) with respect to the affected plan. Such
14 notice shall include a description of the extent
15 to which the plan is funded for benefits which
16 are guaranteed under title IV of such Act and
17 for benefit liabilities.

18 “(B) CONSIDERATION OF RELEVANT IN-
19 FORMATION.—The Secretary shall consider any
20 relevant information provided by a person to
21 whom notice was given under paragraph (1).”.

22 (b) EFFECTIVE DATE.—

23 (1) IN GENERAL.—The amendments made by
24 this section shall apply to plan years beginning after
25 2006.



1 (2) SPECIAL RULE FOR CERTAIN AMORTIZATION
2 EXTENSIONS.—If the Secretary of the Treasury
3 grants an extension under section 304 of the Em-
4 ployee Retirement Income Security Act of 1974 and
5 section 412(e) of the Internal Revenue Code of 1986
6 with respect to any application filed with the Sec-
7 retary of the Treasury on or before June 30, 2005,
8 the extension (and any modification thereof) shall be
9 applied and administered under the rules of such
10 sections as in effect before the enactment of this
11 Act, including the use of the rate of interest deter-
12 mined under section 6621(b) of such Code.

13 **SEC. 512. ADDITIONAL FUNDING RULES FOR MULTIEM-**
14 **LOYER PLANS IN ENDANGERED OR CRIT-**
15 **ICAL STATUS.**

16 (a) IN GENERAL.—Subpart A of part III of sub-
17 chapter D of chapter 1 of the Internal Revenue Code of
18 1986 (as amended by this Act) is amended by inserting
19 after section 431 the following new section:

20 **“SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEM-**
21 **LOYER PLANS IN ENDANGERED STATUS OR**
22 **CRITICAL STATUS.**

23 “(a) GENERAL RULE.—For purposes of this part, in
24 the case of a multiemployer plan—

25 “(1) if the plan is in endangered status—



1 “(A) the plan sponsor shall adopt and im-
2 plement a funding improvement plan in accord-
3 ance with the requirements of subsection (c),
4 and

5 “(B) the requirements of subsection (d)
6 shall apply during the funding plan adoption
7 period and the funding improvement period,
8 and

9 “(2) if the plan is in critical status—

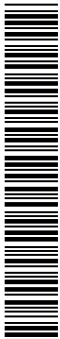
10 “(A) the plan sponsor shall adopt and im-
11 plement a rehabilitation plan in accordance with
12 the requirements of subsection (e), and

13 “(B) the requirements of subsection (f)
14 shall apply during the rehabilitation plan adop-
15 tion period and the rehabilitation period.

16 “(b) DETERMINATION OF ENDANGERED AND CRIT-
17 ICAL STATUS.—For purposes of this section—

18 “(1) ENDANGERED STATUS.—A multiemployer
19 plan is in endangered status for a plan year if, as
20 determined by the plan actuary under paragraph
21 (3), the plan is not in critical status for the plan
22 year and either—

23 “(A) the plan’s funded percentage for such
24 plan year is less than 80 percent, or



1 “(B) the plan has an accumulated funding
2 deficiency for such plan year, or is projected to
3 have such an accumulated funding deficiency
4 for any of the 6 succeeding plan years, taking
5 into account any extension of amortization peri-
6 ods under section 431(d).

7 For purposes of this section, a plan described in
8 subparagraph (B) shall be treated as in seriously en-
9 dangered status.

10 “(2) CRITICAL STATUS.—A multiemployer plan
11 is in critical status for a plan year if, as determined
12 by the plan actuary under paragraph (3), the plan
13 is described in 1 or more of the following subpara-
14 graphs as of the beginning of the plan year:

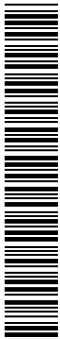
15 “(A) A plan is described in this subpara-
16 graph if—

17 “(i) the funded percentage of the plan
18 is less than 65 percent, and

19 “(ii) the sum of—

20 “(I) the market value of plan as-
21 sets, plus

22 “(II) the present value of the
23 reasonably anticipated employer con-
24 tributions for the current plan year
25 and each of the 5 succeeding plan

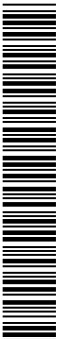


1 years, assuming that the terms of all
2 collective bargaining agreements pur-
3 suant to which the plan is maintained
4 for the current plan year continue in
5 effect for succeeding plan years,
6 is less than the present value of all benefits
7 projected to be payable under the plan dur-
8 ing the current plan year and each of the
9 5 succeeding plan years (plus administra-
10 tive expenses for such plan years).

11 “(B) A plan is described in this subpara-
12 graph if—

13 “(i) the plan has an accumulated
14 funding deficiency for the current plan
15 year, not taking into account any extension
16 of amortization periods under section
17 431(d), or

18 “(ii) the plan is projected to have an
19 accumulated funding deficiency for any of
20 the 3 succeeding plan years (4 succeeding
21 plan years if the funded percentage of the
22 plan is 65 percent or less), not taking into
23 account any extension of amortization peri-
24 ods under section 431(d).



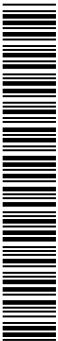
1 “(C) A plan is described in this subpara-
2 graph if—

3 “(i)(I) the plan’s normal cost for the
4 current plan year, plus interest (deter-
5 mined at the rate used for determining
6 costs under the plan) for the current plan
7 year on the amount of unfunded benefit li-
8 abilities under the plan as of the last date
9 of the preceding plan year, exceeds

10 “(II) the present value of the reason-
11 ably anticipated employer contributions for
12 the current plan year,

13 “(ii) the present value of nonforfeit-
14 able benefits of inactive participants is
15 greater than the present value of non-
16 forfeitable benefits of active participants,
17 and

18 “(iii) the plan has an accumulated
19 funding deficiency for the current plan
20 year, or is projected to have such a defi-
21 ciency for any of the 4 succeeding plan
22 years, not taking into account any exten-
23 sion of amortization periods under section
24 431(d).



1 “(D) A plan is described in this subpara-
2 graph if the sum of—

3 “(i) the market value of plan assets,
4 plus

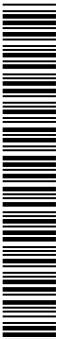
5 “(ii) the present value of the reason-
6 ably anticipated employer contributions for
7 the current plan year and each of the 4
8 succeeding plan years, assuming that the
9 terms of all collective bargaining agree-
10 ments pursuant to which the plan is main-
11 tained for the current plan year continue
12 in effect for succeeding plan years,

13 is less than the present value of all benefits pro-
14 jected to be payable under the plan during the
15 current plan year and each of the 4 succeeding
16 plan years (plus administrative expenses for
17 such plan years).

18 “(3) ANNUAL CERTIFICATION BY PLAN ACTU-
19 ARY.—

20 “(A) IN GENERAL.—During the 90-day pe-
21 riod beginning on the first day of each plan
22 year of a multiemployer plan, the plan actuary
23 shall certify to the Secretary—

24 “(i) whether or not the plan is in en-
25 dangered status for such plan year and

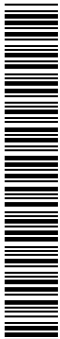


1 whether or not the plan is in critical status
2 for such plan year, and

3 “(ii) in the case of a plan which is in
4 a funding improvement or rehabilitation
5 period, whether or not the plan is making
6 the scheduled progress in meeting the re-
7 quirements of its funding improvement or
8 rehabilitation plan.

9 “(B) ACTUARIAL PROJECTIONS OF ASSETS
10 AND LIABILITIES.—

11 “(i) IN GENERAL.—In making the de-
12 terminations and projections under this
13 subsection, the plan actuary shall make
14 projections required for the current and
15 succeeding plan years, using reasonable ac-
16 tual estimates, assumptions, and meth-
17 ods, of the current value of the assets of
18 the plan and the present value of all liabil-
19 ities to participants and beneficiaries under
20 the plan for the current plan year as of the
21 beginning of such year. The projected
22 present value of liabilities as of the begin-
23 ning of such year shall be determined
24 based on the actuarial statement required
25 under section 103(d) of the Employee Re-



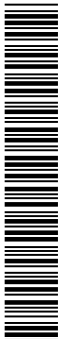
1 tirement Income Security Act of 1974 with
2 respect to the most recently filed annual
3 report or the actuarial valuation for the
4 preceding plan year.

5 “(ii) DETERMINATIONS OF FUTURE
6 CONTRIBUTIONS.—Any actuarial projection
7 of plan assets shall assume—

8 “(I) reasonably anticipated em-
9 ployer contributions for the current
10 and succeeding plan years, assuming
11 that the terms of the one or more col-
12 lective bargaining agreements pursu-
13 ant to which the plan is maintained
14 for the current plan year continue in
15 effect for succeeding plan years, or

16 “(II) that employer contributions
17 for the most recent plan year will con-
18 tinue indefinitely, but only if the plan
19 actuary determines there have been no
20 significant demographic changes that
21 would make such assumption unrea-
22 sonable.

23 “(C) PENALTY FOR FAILURE TO SECURE
24 TIMELY ACTUARIAL CERTIFICATION.—Any fail-
25 ure of the plan’s actuary to certify the plan’s



1 status under this subsection by the date speci-
2 fied in subparagraph (A) shall be treated for
3 purposes of section 502(c)(2) of such Act as a
4 failure or refusal by the plan administrator to
5 file the annual report required to be filed with
6 the Secretary under section 101(b)(4) of such
7 Act.

8 “(D) NOTICE.—In any case in which a
9 multiemployer plan is certified to be in endan-
10 gered or critical status under subparagraph (A),
11 the plan sponsor shall, not later than 30 days
12 after the date of the certification, provide notifi-
13 cation of the endangered or critical status to
14 the participants and beneficiaries, the bar-
15 gaining parties, the Pension Benefit Guaranty
16 Corporation, the Secretary, and the Secretary
17 of Labor.

18 “(c) FUNDING IMPROVEMENT PLAN MUST BE
19 ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED
20 STATUS.—

21 “(1) IN GENERAL.—In any case in which a
22 multiemployer plan is in endangered status for a
23 plan year, the plan sponsor, in accordance with this
24 subsection—



1 “(A) shall adopt a funding improvement
2 plan not later than 240 days following the re-
3 quired date for the actuarial certification of en-
4 dangered status under subsection (b)(3)(A),
5 and

6 “(B) within 30 days after the adoption of
7 the funding improvement plan—

8 “(i) in the case of a plan in seriously
9 endangered status, shall provide to the
10 bargaining parties 1 or more schedules
11 showing revised benefit structures, revised
12 contribution structures, or both, which, if
13 adopted, may reasonably be expected to en-
14 able the multiemployer plan to meet the
15 applicable requirements under paragraph
16 (3) in accordance with the funding im-
17 provement plan, including a description of
18 the reductions in future benefit accruals
19 and increases in contributions that the
20 plan sponsor determines are reasonably
21 necessary to meet the applicable require-
22 ments if the plan sponsor assumes that
23 there are no increases in contributions
24 under the plan other than the increases
25 necessary to meet the applicable require-



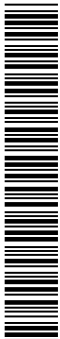
1 ments after future benefit accruals have
2 been reduced to the maximum extent per-
3 mitted by law, and

4 “(ii) may, if the plan sponsor deems
5 appropriate, prepare and provide the bar-
6 gaining parties with additional information
7 relating to contribution rates or benefit re-
8 ductions, alternative schedules, or other in-
9 formation relevant to achieving the re-
10 quirements under paragraph (3) in accord-
11 ance with the funding improvement plan.

12 “(2) EXCEPTION FOR YEARS AFTER PROCESS
13 BEGINS.—Paragraph (1) shall not apply to a plan
14 year if such year is in a funding plan adoption pe-
15 riod or funding improvement period by reason of the
16 plan being in endangered status for a preceding plan
17 year. For purposes of this section, such preceding
18 plan year shall be the initial determination year with
19 respect to the funding improvement plan to which it
20 relates.

21 “(3) FUNDING IMPROVEMENT PLAN.—For pur-
22 poses of this section—

23 “(A) IN GENERAL.—A funding improve-
24 ment plan is a plan which consists of the ac-
25 tions, including options or a range of options to



1 be proposed to the bargaining parties, which,
2 under reasonable actuarial assumptions, will re-
3 sult in the plan meeting the requirements of
4 this paragraph.

5 “(B) PLANS OTHER THAN SERIOUSLY EN-
6 DANGERED PLANS.—In the case of plan not in
7 seriously endangered status, the requirements
8 of this paragraph are met if the plan’s funded
9 percentage as of the close of the funding im-
10 provement period exceeds the lesser of 80 per-
11 cent or a percentage equal to the sum of—

12 “(i) such percentage as of the begin-
13 ning of such period, plus

14 “(ii) 10 percent of the percentage de-
15 termined under clause (i).

16 “(C) SERIOUSLY ENDANGERED PLANS.—
17 In the case of a plan in seriously endangered
18 status, the requirements of this paragraph are
19 met if—

20 “(i) the plan’s funded percentage as
21 of the close of the funding improvement
22 period equals or exceeds the percentage
23 which is equal to the sum of—

24 “(I) such percentage as of the
25 beginning of such period, plus



1 “(II) 33 percent of the difference
2 between 100 percent and the percent-
3 age under subclause (I), and

4 “(ii) there is no accumulated funding
5 deficiency for any plan year during the
6 funding improvement period (taking into
7 account any extension of amortization peri-
8 ods under section 431(d)).

9 “(4) FUNDING IMPROVEMENT PERIOD.—For
10 purposes of this section—

11 “(A) IN GENERAL.—The funding improve-
12 ment period for any funding improvement plan
13 adopted pursuant to this subsection is the 10-
14 year period beginning on the first day of the
15 first plan year of the multiemployer plan begin-
16 ning after the earlier of—

17 “(i) the second anniversary of the
18 date of the adoption of the funding im-
19 provement plan, or

20 “(ii) the expiration of the collective
21 bargaining agreements in effect on the due
22 date for the actuarial certification of en-
23 dangered status for the initial determina-
24 tion year under subsection (b)(3)(A) and
25 covering, as of such due date, at least 75

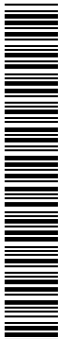


1 percent of the active participants in such
2 multiemployer plan.

3 “(B) COORDINATION WITH CHANGES IN
4 STATUS.—

5 “(i) PLANS NO LONGER IN ENDAN-
6 GERED STATUS.—If the plan’s actuary cer-
7 tifies under subsection (b)(3)(A) for a plan
8 year in any funding plan adoption period
9 or funding improvement period that the
10 plan is no longer in endangered status and
11 is not in critical status, the funding plan
12 adoption period or funding improvement
13 period, whichever is applicable, shall end as
14 of the close of the preceding plan year.

15 “(ii) PLANS IN CRITICAL STATUS.—If
16 the plan’s actuary certifies under sub-
17 section (b)(3)(A) for a plan year in any
18 funding plan adoption period or funding
19 improvement period that the plan is in
20 critical status, the funding plan adoption
21 period or funding improvement period,
22 whichever is applicable, shall end as of the
23 close of the plan year preceding the first
24 plan year in the rehabilitation period with
25 respect to such status.



1 “(5) SPECIAL RULES FOR CERTAIN UNDER-
2 FUNDED PLANS.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), if the funded percentage of
5 a plan in seriously endangered status was 70
6 percent or less as of the beginning of the initial
7 determination year, the following rules shall
8 apply in determining whether the requirements
9 of paragraph (3)(C)(i) are met:

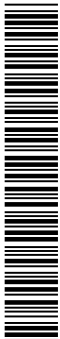
10 “(i) The plan’s funded percentage as
11 of the close of the funding improvement
12 period must equal or exceed a percentage
13 which is equal to the sum of—

14 “(I) such percentage as of the
15 beginning of such period, plus

16 “(II) 20 percent of the difference
17 between 100 percent and the percent-
18 age under subclause (I).

19 “(ii) The funding improvement period
20 under paragraph (4)(A) shall be 15 years
21 rather than 10 years.

22 “(B) SPECIAL RULES FOR PLANS WITH
23 FUNDED PERCENTAGE OVER 70 PERCENT.—If
24 the funded percentage described in subpara-
25 graph (A) was more than 70 percent but less



1 than 80 percent as of the beginning of the ini-
2 tial determination year—

3 “(i) subparagraph (A) shall apply if
4 the plan’s actuary certifies, within 30 days
5 after the certification under subsection
6 (b)(3)(A) for the initial determination
7 year, that, based on the terms of the plan
8 and the collective bargaining agreements in
9 effect at the time of such certification, the
10 plan is not projected to meet the require-
11 ments of paragraph (3)(C)(i) without re-
12 gard to this paragraph, and

13 “(ii) if there is a certification under
14 clause (i), the plan may, in formulating its
15 funding improvement plan, only take into
16 account the rules of subparagraph (A) for
17 plan years in the funding improvement pe-
18 riod beginning on or before the date on
19 which the last of the collective bargaining
20 agreements described in paragraph
21 (4)(A)(ii) expires.

22 Notwithstanding clause (ii), if for any plan year
23 ending after the date described in clause (ii) the
24 plan actuary certifies (at the time of the annual
25 certification under subsection (b)(3)(A) for such



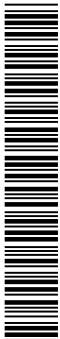
1 plan year) that, based on the terms of the plan
2 and collective bargaining agreements in effect
3 at the time of that annual certification, the plan
4 is not projected to be able to meet the require-
5 ments of paragraph (3)(C)(i) without regard to
6 this paragraph, the plan may continue to as-
7 sume for such year that the funding improve-
8 ment period is 15 years rather than 10 years.

9 “(6) UPDATES TO FUNDING IMPROVEMENT
10 PLAN AND SCHEDULES.—

11 “(A) FUNDING IMPROVEMENT PLAN.—The
12 plan sponsor shall annually update the funding
13 improvement plan and shall file the update with
14 the plan’s annual report under section 104 of
15 the Employee Retirement Income Security Act
16 of 1974.

17 “(B) SCHEDULES.—The plan sponsor may
18 periodically update any schedule of contribution
19 rates provided under this subsection to reflect
20 the experience of the plan, except that the
21 schedule or schedules described in paragraph
22 (1)(B)(i) shall be updated at least once every 3
23 years.

24 “(C) DURATION OF SCHEDULE.—A sched-
25 ule of contribution rates provided by the plan



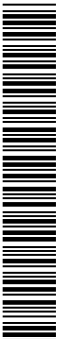
1 sponsor and relied upon by bargaining parties
2 in negotiating a collective bargaining agreement
3 shall remain in effect for the duration of that
4 collective bargaining agreement.

5 “(7) PENALTY IF NO FUNDING IMPROVEMENT
6 PLAN ADOPTED.—A failure of the plan sponsor to
7 adopt a funding improvement plan by the date speci-
8 fied in paragraph (1)(A) shall be treated for pur-
9 poses of section 502(c)(2) of such Act as a failure
10 or refusal by the plan administrator to file the an-
11 nual report required to be filed with the Secretary
12 of Labor under section 101(b)(4) of such Act.

13 “(8) FUNDING PLAN ADOPTION PERIOD.—For
14 purposes of this section, the term ‘funding plan
15 adoption period’ means the period beginning on the
16 date of the certification under subsection (b)(3)(A)
17 for the initial determination year and ending on the
18 day before the first day of the funding improvement
19 period.

20 “(d) RULES FOR OPERATION OF PLAN DURING
21 ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO
22 MEET REQUIREMENTS.—

23 “(1) SPECIAL RULES FOR PLAN ADOPTION PE-
24 RIOD.—During the plan adoption period—



1 “(A) the plan sponsor may not accept a
2 collective bargaining agreement or participation
3 agreement with respect to the multiemployer
4 plan that provides for—

5 “(i) a reduction in the level of con-
6 tributions for any participants,

7 “(ii) a suspension of contributions
8 with respect to any period of service, or

9 “(iii) any new direct or indirect exclu-
10 sion of younger or newly hired employees
11 from plan participation,

12 “(B) no amendment of the plan which in-
13 creases the liabilities of the plan by reason of
14 any increase in benefits, any change in the ac-
15 crual of benefits, or any change in the rate at
16 which benefits become nonforfeitable under the
17 plan may be adopted unless the amendment is
18 required as a condition of qualification under
19 part I of subchapter D of chapter 1 or to com-
20 ply with other applicable law, and

21 “(C) in the case of a plan in seriously en-
22 dangered status, the plan sponsor shall take all
23 reasonable actions which are consistent with the
24 terms of the plan and applicable law and which



1 are expected, based on reasonable assumptions,
2 to achieve—

3 “(i) an increase in the plan’s funded
4 percentage, and

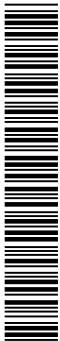
5 “(ii) postponement of an accumulated
6 funding deficiency for at least 1 additional
7 plan year.

8 Actions under subparagraph (C) include applications
9 for extensions of amortization periods under section
10 431(d), use of the shortfall funding method in mak-
11 ing funding standard account computations, amend-
12 ments to the plan’s benefit structure, reductions in
13 future benefit accruals, and other reasonable actions
14 consistent with the terms of the plan and applicable
15 law.

16 “(2) COMPLIANCE WITH FUNDING IMPROVE-
17 MENT PLAN.—

18 “(A) IN GENERAL.—A plan may not be
19 amended after the date of the adoption of a
20 funding improvement plan under subsection (c)
21 so as to be inconsistent with the funding im-
22 provement plan.

23 “(B) NO REDUCTION IN CONTRIBU-
24 TIONS.—A plan sponsor may not during any
25 funding improvement period accept a collective



1 bargaining agreement or participation agree-
2 ment with respect to the multiemployer plan
3 that provides for—

4 “(i) a reduction in the level of con-
5 tributions for any participants,

6 “(ii) a suspension of contributions
7 with respect to any period of service, or

8 “(iii) any new direct or indirect exclu-
9 sion of younger or newly hired employees
10 from plan participation.

11 “(C) SPECIAL RULES FOR BENEFIT IN-
12 CREASES.—A plan may not be amended after
13 the date of the adoption of a funding improve-
14 ment plan under subsection (c) so as to in-
15 crease benefits, including future benefit accru-
16 als, unless—

17 “(i) in the case of a plan in seriously
18 endangered status, the plan actuary cer-
19 tifies that, after taking into account the
20 benefit increase, the plan is still reasonably
21 expected to meet the requirements under
22 subsection (c)(3) in accordance with the
23 schedule contemplated in the funding im-
24 provement plan, and

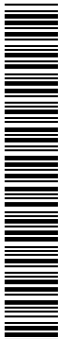


1 “(ii) in the case of a plan not in seri-
2 ously endangered status, the actuary cer-
3 tifies that such increase is paid for out of
4 contributions not required by the funding
5 improvement plan to meet the require-
6 ments under subsection (c)(3) in accord-
7 ance with the schedule contemplated in the
8 funding improvement plan.

9 “(3) FAILURE TO MEET REQUIREMENTS.—

10 “(A) IN GENERAL.—Notwithstanding sec-
11 tion 4971(g), if a plan fails to meet the require-
12 ments of subsection (c)(3) by the end of the
13 funding improvement period, the plan shall be
14 treated as having an accumulated funding defi-
15 ciency for purposes of section 4971 for the last
16 plan year in such period (and each succeeding
17 plan year until such requirements are met) in
18 an amount equal to the greater of the amount
19 of the contributions necessary to meet such re-
20 quirements or the amount of such accumulated
21 funding deficiency without regard to this para-
22 graph.

23 “(B) WAIVER.—In the case of a failure de-
24 scribed in subparagraph (A) which is due to
25 reasonable cause and not to willful neglect, the



1 Secretary of the Treasury may waive part or all
2 of the tax imposed by section 4971 of such
3 Code to the extent that the payment of such tax
4 would be excessive or otherwise inequitable rel-
5 ative to the failure involved.

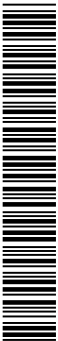
6 “(e) REHABILITATION PLAN MUST BE ADOPTED
7 FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

8 “(1) IN GENERAL.—In any case in which a
9 multiemployer plan is in critical status for a plan
10 year, the plan sponsor, in accordance with this
11 subsection—

12 “(A) shall adopt a rehabilitation plan not
13 later than 240 days following the required date
14 for the actuarial certification of critical status
15 under subsection (b)(3)(A), and

16 “(B) within 30 days after the adoption of
17 the rehabilitation plan—

18 “(i) shall provide to the bargaining
19 parties 1 or more schedules showing re-
20 vised benefit structures, revised contribu-
21 tion structures, or both, which, if adopted,
22 may reasonably be expected to enable the
23 multiemployer plan to emerge from critical
24 status in accordance with the rehabilitation
25 plan, and



1 “(ii) may, if the plan sponsor deems
2 appropriate, prepare and provide the bar-
3 gaining parties with additional information
4 relating to contribution rates or benefit re-
5 ductions, alternative schedules, or other in-
6 formation relevant to emerging from crit-
7 ical status in accordance with the rehabili-
8 tation plan.

9 The schedule or schedules described in subparagraph
10 (B)(i) shall reflect reductions in future benefit ac-
11 cruals and increases in contributions that the plan
12 sponsor determines are reasonably necessary to
13 emerge from critical status. One schedule shall be
14 designated as the default schedule and such schedule
15 shall assume that there are no increases in contribu-
16 tions under the plan other than the increases nec-
17 essary to emerge from critical status after future
18 benefit accruals and other benefits (other than bene-
19 fits the reduction or elimination of which are not
20 permitted under section 411(d)(6)) have been re-
21 duced to the maximum extent permitted by law.

22 “(2) EXCEPTION FOR YEARS AFTER PROCESS
23 BEGINS.—Paragraph (1) shall not apply to a plan
24 year if such year is in a rehabilitation plan adoption
25 period or rehabilitation period by reason of the plan



1 being in critical status for a preceding plan year.
2 For purposes of this section, such preceding plan
3 year shall be the initial critical year with respect to
4 the rehabilitation plan to which it relates.

5 “(3) REHABILITATION PLAN.—For purposes of
6 this section—

7 “(A) IN GENERAL.—A rehabilitation plan
8 is a plan which consists of—

9 “(i) actions which will enable, under
10 reasonable actuarial assumptions, the plan
11 to cease to be in critical status by the end
12 of the rehabilitation period and may in-
13 clude reductions in plan expenditures (in-
14 cluding plan mergers and consolidations),
15 reductions in future benefit accruals or in-
16 creases in contributions, if agreed to by the
17 bargaining parties, or any combination of
18 such actions, or

19 “(ii) if the plan sponsor determines
20 that, based on reasonable actuarial as-
21 sumptions and upon exhaustion of all rea-
22 sonable measures, the plan can not reason-
23 ably be expected to emerge from critical
24 status by the end of the rehabilitation pe-
25 riod, reasonable measures to emerge from



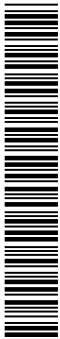
1 critical status at a later time or to forestall
2 possible insolvency (within the meaning of
3 section 4245 of the Employee Retirement
4 Income Security Act of 1974).

5 Such plan shall include the schedules required
6 to be provided under paragraph (1)(B)(i). If
7 clause (ii) applies, such plan shall set forth the
8 alternatives considered, explain why the plan is
9 not reasonably expected to emerge from critical
10 status by the end of the rehabilitation period,
11 and specify when, if ever, the plan is expected
12 to emerge from critical status in accordance
13 with the rehabilitation plan.

14 “(B) UPDATES TO REHABILITATION PLAN
15 AND SCHEDULES.—

16 “(i) REHABILITATION PLAN.—The
17 plan sponsor shall annually update the re-
18 habilitation plan and shall file the update
19 with the plan’s annual report under section
20 104 of the Employee Retirement Income
21 Security Act of 1974.

22 “(ii) SCHEDULES.—The plan sponsor
23 may periodically update any schedule of
24 contribution rates provided under this sub-
25 section to reflect the experience of the



1 plan, except that the schedule or schedules
2 described in paragraph (1)(B)(i) shall be
3 updated at least once every 3 years.

4 “(iii) DURATION OF SCHEDULE.—A
5 schedule of contribution rates provided by
6 the plan sponsor and relied upon by bar-
7 gaining parties in negotiating a collective
8 bargaining agreement shall remain in ef-
9 fect for the duration of that collective bar-
10 gaining agreement.

11 “(C) DEFAULT SCHEDULE.—If the collec-
12 tive bargaining agreement providing for con-
13 tributions under a multiemployer plan that was
14 in effect at the time the plan entered critical
15 status expires and, after receiving a schedule
16 from the plan sponsor under paragraph
17 (1)(B)(i), the bargaining parties have not
18 adopted a collective bargaining agreement with
19 terms consistent with such a schedule, the de-
20 fault schedule described in the last sentence of
21 paragraph (1) shall go into effect with respect
22 to those bargaining parties.

23 “(4) REHABILITATION PERIOD.—For purposes
24 of this section—



1 “(A) IN GENERAL.—The rehabilitation pe-
2 riod for a plan in critical status is the 10-year
3 period beginning on the first day of the first
4 plan year of the multiemployer plan following
5 the earlier of—

6 “(i) the second anniversary of the
7 date of the adoption of the rehabilitation
8 plan, or

9 “(ii) the expiration of the collective
10 bargaining agreements in effect on the
11 date of the due date for the actuarial cer-
12 tification of critical status for the initial
13 critical year under subsection (a)(1) and
14 covering, as of such date at least 75 per-
15 cent of the active participants in such mul-
16 tiemployer plan.

17 If a plan emerges from critical status as pro-
18 vided under subparagraph (B) before the end of
19 such 10-year period, the rehabilitation period
20 shall end with the plan year preceding the plan
21 year for which the determination under sub-
22 paragraph (B) is made.

23 “(B) EMERGENCE.—A plan in critical sta-
24 tus shall remain in such status until a plan
25 year for which the plan actuary certifies, in ac-



1 cordance with subsection (b)(3)(A), that the
2 plan is not projected to have an accumulated
3 funding deficiency for the plan year or any of
4 the 9 succeeding plan years, without regard to
5 use of the shortfall method or any extension of
6 amortization periods under section 431(d).

7 “(5) PENALTY IF NO REHABILITATION PLAN
8 ADOPTED.—A failure of a plan sponsor to adopt a
9 rehabilitation plan by the date specified in para-
10 graph (1)(A) shall be treated for purposes of section
11 502(c)(2) of the Employee Retirement Income Secu-
12 rity Act of 1974 as a failure or refusal by the plan
13 administrator to file the annual report required to
14 be filed with the Secretary of Labor under section
15 101(b)(4) of such Act.

16 “(6) REHABILITATION PLAN ADOPTION PE-
17 RIOD.—For purposes of this section, the term ‘reha-
18 bilitation plan adoption period’ means the period be-
19 ginning on the date of the certification under sub-
20 section (b)(3)(A) for the initial critical year and end-
21 ing on the day before the first day of the rehabilita-
22 tion period.

23 “(7) LIMITATION ON REDUCTION IN RATES OF
24 FUTURE ACCRUALS.—Any reduction in the rate of
25 future accruals under any schedule described in

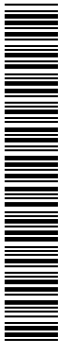


1 paragraph (1)(B)(i) shall not reduce the rate of fu-
2 ture accruals below—

3 “(A) a monthly benefit (payable as a single
4 life annuity commencing at the participant’s
5 normal retirement age) equal to 1 percent of
6 the contributions required to be made with re-
7 spect to a participant, or the equivalent stand-
8 ard accrual rate for a participant or group of
9 participants under the collective bargaining
10 agreements in effect as of the first day of the
11 initial critical year, or

12 “(B) if lower, the accrual rate under the
13 plan on such first day.

14 The equivalent standard accrual rate shall be deter-
15 mined by the plan sponsor based on the standard or
16 average contribution base units which the plan spon-
17 sor determines to be representative for active partici-
18 pants and such other factors as the plan sponsor de-
19 termines to be relevant. Nothing in this paragraph
20 shall be construed as limiting the ability of the plan
21 sponsor to prepare and provide the bargaining par-
22 ties with alternative schedules to the default sched-
23 ule that established lower or higher accrual and con-
24 tribution rates than the rates otherwise described in
25 this paragraph.



1 “(8) EMPLOYER IMPACT.—For the purposes of
2 this section, the plan sponsor shall consider the im-
3 pact of the rehabilitation plan and contribution
4 schedules authorized by this section on bargaining
5 parties with fewer than 500 employees and shall im-
6 plement the plan in a manner that encourages their
7 continued participation in the plan and minimizes fi-
8 nancial harm to employers and their workers.

9 “(f) RULES FOR OPERATION OF PLAN DURING
10 ADOPTION AND REHABILITATION PERIOD.—

11 “(1) COMPLIANCE WITH REHABILITATION
12 PLAN.—

13 “(A) IN GENERAL.—A plan may not be
14 amended after the date of the adoption of a re-
15 habilitation plan under subsection (e) so as to
16 be inconsistent with the rehabilitation plan.

17 “(B) SPECIAL RULES FOR BENEFIT IN-
18 CREASES.—A plan may not be amended after
19 the date of the adoption of a rehabilitation plan
20 under subsection (e) so as to increase benefits,
21 including future benefit accruals, unless the
22 plan actuary certifies that such increase is paid
23 for out of additional contributions not con-
24 templated by the rehabilitation plan, and, after
25 taking into account the benefit increase, the



1 multiemployer plan still is reasonably expected
2 to emerge from critical status by the end of the
3 rehabilitation period on the schedule con-
4 templated in the rehabilitation plan.

5 “(2) RESTRICTION ON LUMP SUMS AND SIMI-
6 LAR BENEFITS.—

7 “(A) IN GENERAL.—Effective on the date
8 the notice of certification of the plan’s critical
9 status for the initial critical year under sub-
10 section (b)(3)(D) is sent, and notwithstanding
11 section 411(d)(6), the plan shall not pay—

12 “(i) any payment, in excess of the
13 monthly amount paid under a single life
14 annuity (plus any social security supple-
15 ments described in the last sentence of sec-
16 tion 411(b)(1)(A)),

17 “(ii) any payment for the purchase of
18 an irrevocable commitment from an insurer
19 to pay benefits, and

20 “(iii) any other payment specified by
21 the Secretary by regulations.

22 “(B) EXCEPTION.—Subparagraph (A)
23 shall not apply to a benefit which under section
24 411(a)(11) may be immediately distributed
25 without the consent of the participant or to any



1 makeup payment in the case of a retroactive
2 annuity starting date or any similar payment of
3 benefits owed with respect to a prior period.

4 “(3) ADJUSTMENTS DISREGARDED IN WITH-
5 DRAWAL LIABILITY DETERMINATION.—Any benefit
6 reductions under this subsection shall be disregarded
7 in determining a plan’s unfunded vested benefits for
8 purposes of determining an employer’s withdrawal li-
9 ability under section 4201 of the Employee Retire-
10 ment Income Security Act of 1974.

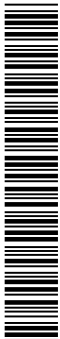
11 “(4) SPECIAL RULES FOR PLAN ADOPTION PE-
12 RIOD.—During the rehabilitation plan adoption
13 period—

14 “(A) the plan sponsor may not accept a
15 collective bargaining agreement or participation
16 agreement with respect to the multiemployer
17 plan that provides for—

18 “(i) a reduction in the level of con-
19 tributions for any participants,

20 “(ii) a suspension of contributions
21 with respect to any period of service, or

22 “(iii) any new direct or indirect exclu-
23 sion of younger or newly hired employees
24 from plan participation, and



1 “(B) no amendment of the plan which in-
2 creases the liabilities of the plan by reason of
3 any increase in benefits, any change in the ac-
4 crual of benefits, or any change in the rate at
5 which benefits become nonforfeitable under the
6 plan may be adopted unless the amendment is
7 required as a condition of qualification under
8 part I of subchapter D of chapter 1 or to com-
9 ply with other applicable law.

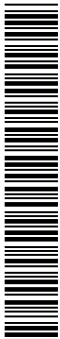
10 “(5) FAILURE TO MEET REQUIREMENTS.—

11 “(A) IN GENERAL.—Notwithstanding sec-
12 tion 4971(g), if a plan—

13 “(i) fails to meet the requirements of
14 subsection (e) by the end of the rehabilita-
15 tion period, or

16 “(ii) has received a certification under
17 subsection (b)(3)(A)(ii) for 3 consecutive
18 plan years that the plan is not making the
19 scheduled progress in meeting its require-
20 ments under the rehabilitation plan,

21 the plan shall be treated as having an accumu-
22 lated funding deficiency for purposes of section
23 4971 for the last plan year in such period (and
24 each succeeding plan year until such require-
25 ments are met) in an amount equal to the



1 greater of the amount of the contributions nec-
2 essary to meet such requirements or the
3 amount of such accumulated funding deficiency
4 without regard to this paragraph.

5 “(B) WAIVER.—In the case of a failure de-
6 scribed in subparagraph (A) which is due to
7 reasonable cause and not to willful neglect, the
8 Secretary may waive part or all of the tax im-
9 posed by section 4971 to the extent that the
10 payment of such tax would be excessive or oth-
11 erwise inequitable relative to the failure in-
12 volved.

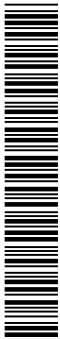
13 “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR
14 DECISIONS.—If, within 60 days of the due date for adop-
15 tion of a funding improvement plan under subsection (c)
16 or a rehabilitation plan under subsection (e), the plan
17 sponsor of a plan in endangered status or a plan in critical
18 status has not agreed on a funding improvement plan or
19 rehabilitation plan, then any member of the board or
20 group that constitutes the plan sponsor may require that
21 the plan sponsor enter into an expedited dispute resolution
22 procedure for the development and adoption of a funding
23 improvement plan or rehabilitation plan.

24 “(h) NONBARGAINED PARTICIPATION.—



1 “(1) BOTH BARGAINED AND NONBARGAINED
2 EMPLOYEE-PARTICIPANTS.—In the case of an em-
3 ployer that contributes to a multiemployer plan with
4 respect to both employees who are covered by one or
5 more collective bargaining agreements and to em-
6 ployees who are not so covered, if the plan is in en-
7 dangered status or in critical status, benefits of and
8 contributions for the nonbargained employees, in-
9 cluding surcharges on those contributions, shall be
10 determined as if those nonbargained employees were
11 covered under the first to expire of the employer’s
12 collective bargaining agreements in effect when the
13 plan entered endangered or critical status.

14 “(2) NONBARGAINED EMPLOYEES ONLY.—In
15 the case of an employer that contributes to a multi-
16 employer plan only with respect to employees who
17 are not covered by a collective bargaining agreement,
18 this section shall be applied as if the employer were
19 the bargaining parties, and its participation agree-
20 ment with the plan was a collective bargaining
21 agreement with a term ending on the first day of the
22 plan year beginning after the employer is provided
23 the schedule or schedules described in subsections
24 (c) and (e).



1 “(3) EMPLOYEES COVERED BY A COLLECTIVE
2 BARGAINING AGREEMENT.—The determination as to
3 whether an employee covered by a collective bar-
4 gaining agreement for purposes of this section shall
5 be made without regard to the special rule in Treas-
6 ury Regulation section 1.410(b)–6(d)(ii)(D).

7 “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-
8 poses of this section—

9 “(1) BARGAINING PARTY.—The term ‘bar-
10 gaining party’ means—

11 “(A)(i) except as provided in clause (ii), an
12 employer who has an obligation to contribute
13 under the plan; or

14 “(ii) in the case of a plan described under
15 section 404(c), or a continuation of such a plan,
16 the association of employers that is the em-
17 ployee settlor of the plan; and

18 “(B) an employee organization which, for
19 purposes of collective bargaining, represents
20 plan participants employed by an employer who
21 has an obligation to contribute under the plan.

22 “(2) FUNDED PERCENTAGE.—The term ‘fund-
23 ed percentage’ means the percentage equal to a
24 fraction—



1 “(A) the numerator of which is the value
2 of the plan’s assets, as determined under sec-
3 tion 431(c)(2), and

4 “(B) the denominator of which is the ac-
5 crued liability of the plan, determined using ac-
6 tuarial assumptions described in section
7 431(c)(3).

8 “(3) ACCUMULATED FUNDING DEFICIENCY.—
9 The term ‘accumulated funding deficiency’ has the
10 meaning given such term in section 412(a).

11 “(4) ACTIVE PARTICIPANT.—The term ‘active
12 participant’ means, in connection with a multiem-
13 ployer plan, a participant who is in covered service
14 under the plan.

15 “(5) INACTIVE PARTICIPANT.—The term ‘inac-
16 tive participant’ means, in connection with a multi-
17 employer plan, a participant, or the beneficiary or
18 alternate payee of a participant, who—

19 “(A) is not in covered service under the
20 plan, and

21 “(B) is in pay status under the plan or has
22 a nonforfeitable right to benefits under the
23 plan.

24 “(6) PAY STATUS.—A person is in pay status
25 under a multiemployer plan if—



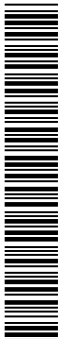
1 “(A) at any time during the current plan
2 year, such person is a participant or beneficiary
3 under the plan and is paid an early, late, nor-
4 mal, or disability retirement benefit under the
5 plan (or a death benefit under the plan related
6 to a retirement benefit), or

7 “(B) to the extent provided in regulations
8 of the Secretary, such person is entitled to such
9 a benefit under the plan.

10 “(7) OBLIGATION TO CONTRIBUTE.—The term
11 ‘obligation to contribute’ has the meaning given such
12 term under section 4212(a) of the Employee Retire-
13 ment Income Security Act of 1974.

14 “(8) ACTUARIAL METHOD.—Notwithstanding
15 any other provision of this section, the actuary’s de-
16 terminations with respect to a plan’s normal cost,
17 actuarial accrued liability, and improvements in a
18 plan’s funded percentage under this section shall be
19 based upon the unit credit funding method (whether
20 or not that method is used for the plan’s actuarial
21 valuation).

22 “(9) PLAN SPONSOR.—In the case of a plan de-
23 scribed under section 404(c), or a continuation of
24 such a plan, the term ‘plan sponsor’ means the bar-
25 gaining parties described under paragraph (1).”



1 (b) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendment made by
3 this section shall apply with respect to plan years be-
4 ginning after 2006.

5 (2) SPECIAL RULE FOR CERTAIN RESTORED
6 BENEFITS.—In the case of a multiemployer plan—

7 (A) with respect to which benefits were re-
8 duced pursuant to a plan amendment adopted
9 on or after January 1, 2002, and before June
10 30, 2005, and

11 (B) which, pursuant to the plan document,
12 the trust agreement, or a formal written com-
13 munication from the plan sponsor to partici-
14 pants provided before June 30, 2005, provided
15 for the restoration of such benefits,

16 the amendments made by this section shall not apply
17 to such benefit restorations to the extent that any
18 restriction on the providing or accrual of such bene-
19 fits would otherwise apply by reason of such amend-
20 ments.

21 **PART III—SUNSET OF FUNDING RULES**

22 **SEC. 516. SUNSET OF FUNDING RULES.**

23 (a) REPORT.—Not later than December 31, 2011,
24 the Secretary of Labor, the Secretary of the Treasury, and
25 the Executive Director of the Pension Benefit Guaranty



1 Corporation shall conduct a study of the effect of the
2 amendments made by this subtitle on the operation and
3 funding status of multiemployer plans and shall report the
4 results of such study, including any recommendations for
5 legislation, to the Congress.

6 (b) MATTERS INCLUDED IN STUDY.—The study re-
7 quired under subsection (a) shall include—

8 (1) the effect of funding difficulties, funding
9 rules in effect before the date of the enactment of
10 this Act, and the amendments made by this subtitle
11 on small businesses participating in multiemployer
12 plans,

13 (2) the effect on the financial status of small
14 employers of—

15 (A) funding targets set in funding im-
16 provement and rehabilitation plans and associ-
17 ated contribution increases,

18 (B) funding deficiencies,

19 (C) excise taxes,

20 (D) withdrawal liability,

21 (E) the possibility of alternatives schedules
22 and procedures for financially-troubled employ-
23 ers, and

24 (F) other aspects of the multiemployer sys-
25 tem, and



1 (3) the role of the multiemployer pension plan
2 system in helping small employers to offer pension
3 benefits.

4 (c) SUNSET.—

5 (1) IN GENERAL.—Except as provided in this
6 subsection, notwithstanding any other provision of
7 this Act, the provisions of, and the amendments
8 made by, this subtitle shall not apply to plan years
9 beginning after December 31, 2014, and the Em-
10 ployee Retirement Income Security Act of 1974 and
11 the Internal Revenue Code of 1986 shall be applied
12 to such plan years under the provisions of sections
13 302 through 308 of such Act and 412 of such Code
14 (as in effect before the amendments made by this
15 Act).

16 (2) FUNDING IMPROVEMENT AND REHABILITA-
17 TION PLANS.—If a plan is operating under a fund-
18 ing improvement or rehabilitation plan under section
19 305 of such Act or 432 of such Code for its last
20 year beginning before January 1, 2015, such plan
21 shall continue to operate under such funding im-
22 provement or rehabilitation plan during any period
23 after December 31, 2014, such funding improvement
24 or rehabilitation plan is in effect and all provisions
25 of such Act or Code relating to the operation of such



1 funding improvement or rehabilitation plan shall
2 continue in effect during such period.

3 (3) AMORTIZATION SCHEDULES.—In the case
4 of any amount amortized under section 304(b) of
5 such Act or 431 of such Code (as in effect after the
6 amendments made by this subtitle) over any period
7 beginning with a plan year beginning before January
8 1, 2015, such amount shall, in lieu of the amortiza-
9 tion which would apply after the application of this
10 subsection, continue to be amortized under such sec-
11 tion 304 or 431 (as so in effect).

12 **Subtitle B—Deduction and Related** 13 **Provisions**

14 **SEC. 521. DEDUCTION LIMITS FOR MULTIEMPLOYER** 15 **PLANS.**

16 (a) INCREASE IN DEDUCTION.—Section
17 404(a)(1)(D) of the Internal Revenue Code of 1986, as
18 amended by this Act, is amended to read as follows:

19 “(D) AMOUNT DETERMINED ON BASIS OF
20 UNFUNDED CURRENT LIABILITY.—

21 “(i) IN GENERAL.—In the case of a
22 defined benefit plan which is a multiem-
23 ployer plan, except as provided in regula-
24 tions, the maximum amount deductible
25 under the limitations of this paragraph



1 shall not be less than the unfunded current
2 liability of the plan.

3 “(ii) UNFUNDED CURRENT LIABIL-
4 ITY.—For purposes of clause (i), the term
5 ‘unfunded current liability’ means the ex-
6 cess (if any) of—

7 “(I) 140 percent of the current
8 liability of the plan determined under
9 section 431(c)(6)(C), over

10 “(II) the value of the plan’s as-
11 sets determined under section
12 431(c)(2).”.

13 (b) EXCEPTION FROM LIMITATION ON DEDUCTION
14 WHERE COMBINATION OF DEFINED CONTRIBUTION AND
15 DEFINED BENEFIT PLANS.—

16 (1) IN GENERAL.—Section 404(a)(7)(C) of such
17 Code, as amended by this Act, is amended by adding
18 at the end the following new clause:

19 “(v) MULTIEMPLOYER PLANS.—In ap-
20 plying this paragraph, any multiemployer
21 plan shall not be taken into account.”.

22 (2) CONFORMING AMENDMENT.—Section
23 404(a)(7)(A) of such Code is amended by striking
24 the last sentence.

25 (c) EFFECTIVE DATES.—



1 (1) DEDUCTION LIMIT.—The amendment made
2 by subsection (a) shall apply to years beginning after
3 December 31, 2006.

4 (2) EXCEPTION.—The amendments made by
5 subsection (b) shall apply to years beginning after
6 December 31, 2005.

7 **SEC. 522. TRANSFER OF EXCESS PENSION ASSETS TO MUL-**
8 **TIEMPLOYER HEALTH PLAN.**

9 (a) IN GENERAL.—Section 420(e) of the Internal
10 Revenue Code of 1986 (relating to definitions and special
11 rules) is amended by adding at the end the following new
12 paragraph:

13 “(5) APPLICATION TO MULTIEMPLOYER
14 PLAN.—In the case of any plan to which section
15 404(c) applies (or any successor plan primarily cov-
16 ering employees in the building and construction in-
17 dustry)—

18 “(A) the prohibition under subsection (a)
19 on the application of this section to a multiem-
20 ployer plan shall not apply, and

21 “(B) this section shall be applied to any
22 such plan—

23 “(i) by treating any reference in this
24 section to an employer as a reference to all



1 employers maintaining the plan (or, if ap-
2 propriate, the plan sponsor), and

3 “(ii) in accordance with such modi-
4 fications of this section (and the provisions
5 of this title and the Employee Retirement
6 Income Security Act of 1974 relating to
7 this section) as the Secretary determines
8 appropriate to reflect the fact the plan is
9 not maintained by a single employer.”

10 (b) AMENDMENTS OF ERISA.—

11 (1) Section 101(e)(3) of the Employee Retire-
12 ment Income Security Act of 1974 (29 U.S.C.
13 1021(e)(3)) is amended by striking “American Jobs
14 Creation Act of 2004” and inserting “Pension Secu-
15 rity and Transparency Act of 2005”.

16 (2) Section 403(c)(1) of such Act (29 U.S.C.
17 1103(c)(1)) is amended by striking “American Jobs
18 Creation Act of 2004” and inserting “Pension Secu-
19 rity and Transparency Act of 2005”.

20 (3) Section 408(b)(13) of such Act (29 U.S.C.
21 1108(b)(13)) is amended by striking “American
22 Jobs Creation Act of 2004” and inserting “Pension
23 Security and Transparency Act of 2005”.



1 (c) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to transfers made in taxable years
3 beginning after December 31, 2004.

4 **TITLE VI—ENHANCED RETIRE-**
5 **MENT SAVINGS AND DEFINED**
6 **CONTRIBUTION PLANS**

7 **SEC. 701. AMERISAVE MATCHING CREDIT.**

8 (a) IN GENERAL.—Subpart C of part IV of sub-
9 chapter A of chapter 1 of the Internal Revenue Code of
10 1986 (relating to refundable credits) is amended by redes-
11 ignating section 36 as section 37 and by inserting after
12 section 35 the following new section:

13 **“SEC. 36. AMERISAVE MATCHING CREDIT.**

14 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
15 gible individual, there shall be allowed as a credit against
16 the tax imposed by this subtitle for the taxable year an
17 amount equal to 100 percent of so much of the qualified
18 retirement savings contributions of the eligible individual
19 for the taxable year as do not exceed the applicable limit.

20 “(b) APPLICABLE LIMIT.—For purposes of this
21 section—

22 “(1) IN GENERAL.—The applicable limit is
23 \$1,000, reduced (but not below zero) by the reduc-
24 tion amount for each \$1,000 (or fraction thereof) by



1 which the taxpayer's adjusted gross income for the
2 taxable year exceeds the threshold amount.

3 “(2) REDUCTION AMOUNT; THRESHOLD
4 AMOUNT.—For purposes of paragraph (1), the re-
5 duction amount and the threshold amount shall be
6 determined in accordance with the following table:

“In the case of	The reduction amount is:	The threshold amount is:
Joint return	\$50	\$50,000
Head of a household	\$66.67	\$37,500
All other cases	\$100	\$25,000.

7 “(3) JOINT RETURN.—In the case of a joint re-
8 turn, this subsection shall be applied separately to
9 each individual filing such return, except that for
10 purposes of paragraph (1), the adjusted gross in-
11 come shall be their combined adjusted gross income
12 of the taxpayer.

13 “(4) COORDINATION WITH MANNER IN WHICH
14 CREDIT ALLOWED.—The credit under subsection (a)
15 shall be allowed only as provided in section 6430.

16 “(c) ELIGIBLE INDIVIDUAL.—For purposes of this
17 section—

18 “(1) IN GENERAL.—The term ‘eligible indi-
19 vidual’ means any individual if such individual has
20 attained the age of 18 as of the close of the taxable
21 year.



1 “(2) DEPENDENTS AND FULL-TIME STUDENTS
2 NOT ELIGIBLE.—The term ‘eligible individual’ shall
3 not include—

4 “(A) any individual with respect to whom
5 a deduction under section 151 is allowable to
6 another taxpayer for a taxable year beginning
7 in the calendar year in which such individual’s
8 taxable year begins, and

9 “(B) any individual who is a student (as
10 defined in section 152(f)).

11 “(d) QUALIFIED RETIREMENT SAVINGS CONTRIBU-
12 TIONS.—For purposes of this section—

13 “(1) IN GENERAL.—The term ‘qualified retire-
14 ment savings contributions’ means, with respect to
15 any taxable year, the sum of—

16 “(A) the amount of the qualified retire-
17 ment contributions (as defined in section
18 219(e)) made by the eligible individual,

19 “(B) the amount of—

20 “(i) any elective deferrals (as defined
21 in section 402(g)(3)) of such individual,
22 and

23 “(ii) any elective deferral of com-
24 pensation by such individual under an eli-
25 gible deferred compensation plan (as de-



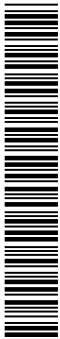
1 fined in section 457(b)) of an eligible em-
2 ployer described in section 457(e)(1)(A),
3 and

4 “(C) the amount of voluntary employee
5 contributions by such individual to any qualified
6 retirement plan (as defined in section 4974(c)).

7 “(2) REDUCTION FOR CERTAIN DISTRIBUTIONS.—

8
9 “(A) IN GENERAL.—The qualified retire-
10 ment savings contributions determined under
11 paragraph (1) shall be reduced (but not below
12 zero) by the aggregate distributions received by
13 the individual during the testing period from
14 any entity of a type to which contributions
15 under paragraph (1) may be made. The pre-
16 ceding sentence shall not apply to the portion of
17 any distribution which is not includible in gross
18 income by reason of a trustee-to-trustee trans-
19 fer or a rollover distribution.

20 “(B) TESTING PERIOD.—For purposes of
21 subparagraph (A), the testing period, with re-
22 spect to a taxable year, is the period which in-
23 cludes such taxable year and the 3 preceding
24 taxable years.



1 “(C) EXCEPTED DISTRIBUTIONS.—There
2 shall not be taken into account under subpara-
3 graph (A)—

4 “(i) any distribution referred to in
5 section 72(p), 401(k)(8), 401(m)(6),
6 402(g)(2), 404(k), or 408(d)(4), and

7 “(ii) any distribution to which section
8 408A(d)(3) applies.

9 “(D) TREATMENT OF DISTRIBUTIONS RE-
10 CEIVED BY SPOUSE OF INDIVIDUAL.—For pur-
11 poses of determining distributions received by
12 an individual under subparagraph (A) for any
13 taxable year, any distribution received by the
14 spouse of such individual shall be treated as re-
15 ceived by such individual if such individual and
16 spouse file a joint return for such taxable year
17 and for the taxable year during which the
18 spouse receives the distribution.

19 “(3) ADDITIONAL TAX ON EARLY NET WITH-
20 DRAWALS.—

21 “(A) IN GENERAL.—If with respect to a
22 taxable year there is a disqualified net with-
23 drawal, the amount of tax imposed by this
24 chapter for such taxable year shall be increased



1 by the amount determined under subparagraph
2 (B).

3 “(B) DETERMINATION OF AMOUNT.—The
4 amount determined under this subparagraph is
5 the aggregate decrease in credits allowed under
6 this section for any of the preceding 10 taxable
7 years if the disqualified net withdrawals were
8 applied against (and operated to reduce) the
9 qualified retirement savings contributions taken
10 into account under subsection (a). Such reduc-
11 tion shall be applied in order beginning with the
12 first taxable year in such 10-year period and
13 shall take into account any prior application of
14 this paragraph.

15 “(C) DISQUALIFIED NET WITHDRAWALS.—
16 The term ‘disqualified net withdrawals’ means
17 the aggregate distributions subject to tax under
18 section 72(t) for the taxable year over the quali-
19 fied retirement savings contributions for the
20 taxable year.

21 “(e) SPECIAL RULES.—For purposes of this
22 section—

23 “(1) ADJUSTED GROSS INCOME.—Adjusted
24 gross income shall be determined without regard to
25 sections 911, 931, and 933.



1 “(2) INVESTMENT IN THE CONTRACT.—Any
2 credit under this section shall be disregarded in de-
3 termining investment in the contract.

4 “(f) REGULATIONS.—The Secretary may prescribe
5 such regulations as may be necessary or appropriate to
6 carry out this section, including regulations requiring rec-
7 ordkeeping and information reporting.

8 “(g) TERMINATION.—This section shall not apply to
9 taxable years beginning after December 31, 2010.”.

10 (b) REPEAL OF SAVERS CREDIT.—Subpart A of part
11 IV of subchapter A of chapter 1 of such Code is amended
12 by striking section 25B (relating to elective deferrals and
13 IRA contributions by certain individuals).

14 (c) CONFORMING AMENDMENTS.—

15 (1) Section 26(b)(2) of such Code is amended
16 by striking “and” at the end of subparagraph (R),
17 by striking the period at the end of subparagraph
18 (S) and inserting “, and”, and by inserting after
19 subparagraph (S) the following new subparagraph:

20 “(T) section 36(d)(3) (relating to addi-
21 tional tax where net withdrawals exceed cred-
22 it).”.

23 (2) Section 24(b)(3)(B) of such Code is amend-
24 ed by striking “sections 23 and 25B” and inserting
25 “section 23”.



1 (3) Section 25(e)(1)(C) of such Code is amend-
2 ed by striking “25B,”.

3 (4) Section 26(a)(1) of such Code is amended
4 by striking “sections 23, 24, and 25B” and inserting
5 “sections 23 and 24”.

6 (5) Subchapter C of part IV of subchapter A of
7 chapter 1 of such Code is amended—

8 (A) by redesignating section 36 as section
9 37, and

10 (B) by redesignating section 25B, as
11 moved by paragraph (1), as section 36.

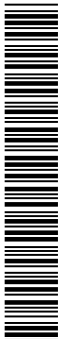
12 (6) Section 904(h) of such Code is amended by
13 striking “sections 23, 24, and 25B” and inserting
14 “sections 23 and 24”.

15 (7) Section 1400C of such Code is amended by
16 striking “sections 23, 24, and 25B” and inserting
17 “section 23 and 24”.

18 (8) The table of sections for subpart C of part
19 IV of subchapter A of chapter 1 of such Code is
20 amended by striking the item relating to section 36
21 and inserting the following:

“Sec. 36. AmeriSave matching credit.
“Sec. 37. Overpayments of tax.”.

22 (9) The table of sections for subpart A of part
23 IV of such Code is amended by striking the item re-
24 lating to section 25B.



(10) Section 1324(b)(2) of title 31, United States Code, is amended by inserting “, or from section 36 of such Code” before the period at the end.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

7 SEC. 702. MANNER IN WHICH AMERISAVE MATCHING CRED-
8 IT ALLOWED.

9 (a) IN GENERAL.—Subchapter B of chapter 65 of the
10 Internal Revenue Code of 1986 (relating to rules of special
11 application) is amended by adding at the end the following
12 new section:

13 "SEC. 6430. MANNER IN WHICH AMERISAVE MATCHING
14 CREDIT ALLOWED.

15 “(a) GENERAL RULE.—The credit allowed under sec-
16 tion 36 shall be allowed only as provided in this section.

“(b) AMOUNT PAID DIRECTLY TO RETIREMENT
PLAN.—The credit allowed under section 36 for a taxable
year shall be paid directly by the Secretary to a plan to
which qualified retirement savings contributions (as de-
fined by section 36(d)) may be made, as specified by the
taxpayer on the return for such taxable year.

23 “(c) TREATMENT OF AMOUNTS RECEIVED BY
24 PLANS.—



1 “(1) CERTAIN RULES DISREGARDED.—Amounts
2 paid under this section to a retirement plan shall be
3 disregarded for all purposes in determining whether
4 the plan meets the applicable requirements of sub-
5 title A.

6 “(2) ACCEPTANCE BY PLANS.—A plan to which
7 payments may be made under this section shall not
8 fail to be treated as qualified merely on account of
9 the receipt of such payments.

10 “(d) AMOUNT NOT TREATED AS CREDIT OR RE-
11 FUND.—Except as provided by subsection (b), the credit
12 allowed under section 36 shall not be used as a credit
13 under subtitle A or refunded as part of a return under
14 subtitle A.

15 “(e) REGULATIONS.—The Secretary shall prescribe
16 such regulations as may be appropriate to carry out this
17 section.”.

18 (b) CLERICAL AMENDMENT.—The table of sections
19 for subchapter B of chapter 65 of such Code is amended
20 by adding at the end the following new item:

“Sec. 6430. Manner in which AmeriSave matching credit allowed.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 2006.



1 **SEC. 703. INCREASING PARTICIPATION THROUGH AUTO-**
2 **MATIC CONTRIBUTION ARRANGEMENTS.**

3 (a) AMENDMENTS TO THE INTERNAL REVENUE
4 CODE OF 1986.—

5 (1) IN GENERAL.—Section 401(k) of the Inter-
6 nal Revenue Code of 1986 (relating to cash or de-
7 ferred arrangement) is amended by adding at the
8 end the following new paragraph:

9 “(13) ALTERNATIVE METHOD FOR AUTOMATIC
10 CONTRIBUTION ARRANGEMENTS TO MEET NON-
11 DISCRIMINATION REQUIREMENTS.—

12 “(A) IN GENERAL.—A qualified automatic
13 contribution arrangement shall be treated as
14 meeting the requirements of paragraph
15 (3)(A)(ii).

16 “(B) QUALIFIED AUTOMATIC CONTRIBU-
17 TION ARRANGEMENT.—For purposes of this
18 paragraph, the term ‘qualified automatic con-
19 tribution arrangement’ means any cash or de-
20 ferred arrangement which meets the require-
21 ments of subparagraphs (C) through (F).

22 “(C) AUTOMATIC DEFERRAL.—

23 “(i) IN GENERAL.—The requirements
24 of this subparagraph are met if, under the
25 arrangement, each employee eligible to
26 participate in the arrangement is treated



1 as having elected to have the employer
2 make elective contributions in an amount
3 equal to a qualified percentage of com-
4 pensation.

5 “(ii) ELECTION OUT.—The election
6 treated as having been made under clause
7 (i) shall cease to apply with respect to any
8 employee if such employee makes an af-
9 firmative election—

10 “(I) to not have such contribu-
11 tions made, or

12 “(II) to make elective contribu-
13 tions at a level specified in such af-
14 firmative election.

15 “(iii) QUALIFIED PERCENTAGE.—For
16 purposes of this subparagraph, the term
17 ‘qualified percentage’ means, with respect
18 to any employee, any percentage deter-
19 mined under the arrangement if such per-
20 centage is applied uniformly, does not ex-
21 ceed 10 percent, and is at least—

22 “(I) 3 percent during the period
23 ending on the last day of the first
24 plan year which begins after the date
25 on which the first elective contribution



1 described in clause (i) is made with
2 respect to such employee,

3 “(II) 4 percent during the first
4 plan year following the plan year de-
5 scribed in subclause (I),

6 “(III) 5 percent during the sec-
7 ond plan year following the plan year
8 described in subclause (I), and

9 “(IV) 6 percent during any sub-
10 sequent plan year.

11 “(iv) AUTOMATIC DEFERRAL FOR
12 CURRENT EMPLOYEES NOT REQUIRED.—
13 Clause (i) shall be applied without taking
14 into account any employee who was eligible
15 to participate in the arrangement (or a
16 predecessor arrangement) immediately be-
17 fore the date on which such arrangement
18 becomes a qualified automatic contribution
19 arrangement (determined after application
20 of this clause).

21 “(D) PARTICIPATION.—

22 “(i) IN GENERAL.—An arrangement
23 meets the requirements of this subpara-
24 graph for any year if, during the plan year
25 or the preceding plan year, elective con-



1 tributions are made on behalf of at least
2 70 percent of the employees eligible to par-
3 ticipate in the arrangement other than—

4 “(I) highly compensated employ-
5 ees, and

6 “(II) at the election of the plan
7 administrator, employees described in
8 subparagraph (C)(iv).

9 “(ii) FIRST PLAN YEAR.—An arrange-
10 ment (other than a successor arrangement)
11 shall be treated as meeting the require-
12 ments of this subparagraph with respect to
13 the first plan year with respect to which
14 such arrangement is a qualified automatic
15 contribution arrangement (determined
16 without regard to this subparagraph).

17 “(E) MATCHING OR NONELECTIVE CON-
18 TRIBUTIONS.—

19 “(i) IN GENERAL.—The requirements
20 of this subparagraph are met if, under the
21 arrangement, the employer—

22 “(I) makes matching contribu-
23 tions on behalf of each employee who
24 is not a highly compensated employee
25 in an amount equal to 50 percent of



1 the elective contributions of the em-
2 ployee to the extent such elective con-
3 tributions do not exceed 6 percent of
4 compensation, or

5 “(II) is required, without regard
6 to whether the employee makes an
7 elective contribution or employee con-
8 tribution, to make a contribution to a
9 defined contribution plan on behalf of
10 each employee who is not a highly
11 compensated employee and who is eli-
12 gible to participate in the arrange-
13 ment in an amount equal to at least
14 2 percent of the employee’s compensa-
15 tion.

16 “(ii) APPLICATION OF RULES FOR
17 MATCHING CONTRIBUTIONS.—The rules of
18 clauses (ii) and (iii) of paragraph (12)(B)
19 shall apply for purposes of clause (i)(I).

20 “(iii) WITHDRAWAL AND VESTING RE-
21 STRICTIONS.—An arrangement shall not be
22 treated as meeting the requirements of
23 clause (i) unless, with respect to employer
24 contributions (including matching con-
25 tributions) taken into account in deter-



1 mining whether the requirements of clause
2 (i) are met—

3 “(I) any employee who has com-
4 pleted at least 2 years of service
5 (within the meaning of section
6 411(a)) has a nonforfeitable right to
7 100 percent of the employee’s accrued
8 benefit derived from such employer
9 contributions, and

10 “(II) the requirements of sub-
11 paragraph (B) of paragraph (2) are
12 met with respect to all such employer
13 contributions.

14 “(iv) APPLICATION OF CERTAIN
15 OTHER RULES.—The rules of subpara-
16 graphs (E)(ii) and (F) of paragraph (12)
17 shall apply for purposes of subclauses (I)
18 and (II) of clause (i).

19 “(F) NOTICE REQUIREMENTS.—

20 “(i) IN GENERAL.—The requirements
21 of this subparagraph are met if, within a
22 reasonable period before each plan year,
23 each employee eligible to participate in the
24 arrangement for such year receives written



1 notice of the employee's rights and obliga-
2 tions under the arrangement which—

3 “(I) is sufficiently accurate and
4 comprehensive to apprise the employee
5 of such rights and obligations, and

6 “(II) is written in a manner cal-
7 culated to be understood by the aver-
8 age employee to whom the arrange-
9 ment applies.

10 “(ii) TIMING AND CONTENT REQUIRE-
11 MENTS.—A notice shall not be treated as
12 meeting the requirements of clause (i) with
13 respect to an employee unless—

14 “(I) the notice explains the em-
15 ployee's right under the arrangement
16 to elect not to have elective contribu-
17 tions made on the employee's behalf
18 (or to elect to have such contributions
19 made at a different percentage),

20 “(II) in the case of an arrange-
21 ment under which the employee may
22 elect among 2 or more investment op-
23 tions, the notice explains how con-
24 tributions made under the arrange-
25 ment will be invested in the absence of



1 any investment election by the em-
2 ployee, and

3 “(III) the employee has a reason-
4 able period of time after receipt of the
5 notice described in subclauses (I) and
6 (II) and before the first elective con-
7 tribution is made to make either such
8 election.”.

9 (2) MATCHING CONTRIBUTIONS.—Section
10 401(m) of such Code (relating to nondiscrimination
11 test for matching contributions and employee con-
12 tributions) is amended by redesignating paragraph
13 (12) as paragraph (13) and by inserting after para-
14 graph (11) the following new paragraph:

15 “(12) ALTERNATIVE METHOD FOR AUTOMATIC
16 CONTRIBUTION ARRANGEMENTS.—A defined con-
17 tribution plan shall be treated as meeting the re-
18 quirements of paragraph (2) with respect to match-
19 ing contributions if the plan—

20 “(A) is a qualified automatic contribution
21 arrangement (as defined in subsection (k)(13)),
22 and

23 “(B) meets the requirements of paragraph
24 (11)(B).”.



1 (3) EXCLUSION FROM DEFINITION OF TOP-
2 HEAVY PLANS.—

3 (A) ELECTIVE CONTRIBUTION RULE.—
4 Clause (i) of section 416(g)(4)(H) of such Code
5 is amended by inserting “or 401(k)(13)” after
6 “section 401(k)(12)”.

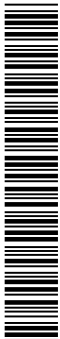
7 (B) MATCHING CONTRIBUTION RULE.—
8 Clause (ii) of section 416(g)(4)(H) of such
9 Code is amended by inserting “or 401(m)(12)”
10 after “section 401(m)(11)”.

11 (4) CORRECTIVE DISTRIBUTIONS.—

12 (A) IN GENERAL.—Section 414 of such
13 Code (relating to definitions and special rules)
14 is amended by adding at the end the following
15 new subsection:

16 “(w) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

17 “(1) IN GENERAL.—No tax shall be imposed
18 under section 72(t) on a distribution from an appli-
19 cable employer plan to the employee with respect to
20 whom such contribution relates if such distribution
21 does not exceed the erroneous automatic contribu-
22 tion amount and is made not later than the 1st
23 April 15 following the close of the taxable year in
24 which such contribution was made.



1 “(2) ERRONEOUS AUTOMATIC CONTRIBUTION
2 AMOUNT.—For purposes of this subsection—

3 “(A) IN GENERAL.—The term ‘erroneous
4 automatic contribution amount’ means the less-
5 er of—

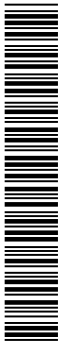
6 “(i) the amount of automatic con-
7 tributions made during the applicable pe-
8 riod which the employee elects in a notice
9 to the plan administrator to treat as an er-
10 roneous automatic contribution amount for
11 purposes of this subsection, or

12 “(ii) \$500.

13 “(B) AUTOMATIC CONTRIBUTION.—The
14 term ‘automatic contribution’ means contribu-
15 tions which, under the terms of the plan—

16 “(i) the employee can elect to be made
17 as contributions under the plan on behalf
18 of the employee, or to the employee di-
19 rectly in cash, and

20 “(ii) which are made on behalf of the
21 employee under the plan pursuant to a
22 plan provision treating the employee as
23 having elected to have the employer make
24 such contributions on behalf of the em-
25 ployee until the employee affirmatively



1 elects not to have such contribution made
2 or affirmatively elects to make contribu-
3 tions as a specified level.

4 “(3) APPLICABLE EMPLOYER PLAN.—For pur-
5 poses of this subsection, the term ‘applicable em-
6 ployer plan’ means—

7 “(A) an employees’ trust described in sec-
8 tion 401(a) which is exempt from tax under
9 section 501(a), and

10 “(B) a plan under which amounts are con-
11 tributed by an individual’s employer for an an-
12 nuity contract described in section 403(b).

13 “(4) APPLICABLE PERIOD.—For purposes of
14 this subsection, the term ‘applicable period’ means,
15 with respect to any employee, the three month pe-
16 riod that begins on the first date that an automatic
17 contribution described in paragraph (2)(B) is made
18 with respect to such employee.”.

19 (B) VESTING CONFORMING AMEND-
20 MENTS.—

21 (i) Section 411(a)(3)(G) of such Code
22 is amended by inserting “an erroneous
23 automatic contribution under section
24 414(w),” after “402(g)(2)(A),”.



1 (ii) The heading of section
2 411(a)(3)(G) of such Code is amended by
3 inserting “**OR ERRONEOUS AUTOMATIC**
4 **CONTRIBUTION**” before the period.

5 (iii) Section 401(k)(8)(E) of such
6 Code is amended by inserting “an erro-
7 neous automatic contribution under section
8 414(w),” after “402(g)(2)(A),”.

9 (iv) The heading of section
10 401(k)(8)(E) of such Code is amended by
11 inserting “**OR ERRONEOUS AUTOMATIC**
12 **CONTRIBUTION**” before the period.

13 (5) EFFECTIVE DATE.—The amendments made
14 by this subsection shall apply to plan years begin-
15 ning after December 31, 2005.

16 **SEC. 704. PREEMPTION OF STATE LAWS PRECLUDING**
17 **AUTOMATIC ENROLLMENT OR AUTOMATIC**
18 **ROLLOVERS.**

19 (a) IN GENERAL.—Section 514 of the Employee Re-
20 tirement Income Security Act of 1974 (29 U.S.C.
21 1144(b)) is amended—

22 (1) by redesignating subsection (d) as sub-
23 section (e); and

24 (2) by inserting after subsection (c) the fol-
25 lowing new subsection:



1 “(d) The provisions of this title shall supersede any
2 and all State laws insofar as they may preclude, or have
3 the effect of precluding—

4 “(1) the establishment or operation of, or mak-
5 ing of contributions to, a pension plan under a quali-
6 fied automatic enrollment arrangement (as defined
7 in section 401(k)(13) of the Internal Revenue Code
8 of 1986), or

9 “(2) a distribution described in section
10 401(a)(31)(B) of the Internal Revenue Code of 1986
11 or the establishment or operation of an individual re-
12 tirement plan (as defined in section 7701(a)(37) of
13 such Code) allowing receipt of such distributions.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this subsection shall apply with respect to actions (de-
16 scribed in paragraph (1) or (2) of section 514(d) of the
17 Employee Retirement Income Security Act of 1974 (added
18 by this subsection)) taken before, on, or after the date of
19 the enactment of this Act.

20 **SEC. 705. FIDUCIARY STANDARDS RELATING TO AUTO-**
21 **MATIC OR DEFAULT INVESTMENTS.**

22 (a) IN GENERAL.—Section 404 of the Employee Re-
23 tirement Income Security Act of 1974 (29 U.S.C. 1104)
24 is amended by adding at the end the following new sub-
25 section:



1 “(e)(1) A fiduciary with respect to an individual ac-
2 count plan shall be deemed to have satisfied the require-
3 ments of subsection (a)(1)(B) with respect to the plan,
4 in connection with any qualifying automatic investment
5 under the plan, to the extent those requirements pertain
6 to asset allocation as between equity instruments or in-
7 vestments and debt instruments or investments and to
8 such further extent as may be specified by the Secretary
9 in administrative guidance of general applicability.

10 “(2) For purposes of this subsection, the term ‘quali-
11 fying automatic investment’ means, in connection with a
12 participant in a plan, an investment of assets constituting
13 some or all of the participant’s accrued benefit under the
14 plan in a form of investment specified by the plan, in any
15 case in which—

16 “(A) such assets—

17 “(i) are attributable to employer contribu-
18 tions (and earnings thereon) made pursuant to
19 a qualified automatic enrollment arrangement
20 (as defined in section 401(k)(13) of the Inter-
21 nal Revenue Code of 1986),

22 “(ii) are attributable to distributions de-
23 scribed in section 401(a)(31)(B) of such Code,
24 or



1 “(iii) have been identified by the Secretary
2 as appropriate for automatic investment,

3 “(B) the plan provides for investment of such
4 assets in such form of investment unless, in lieu
5 thereof, alternative forms of investments, which are
6 also made available to the participant under the
7 terms of the plan, are selected by the participant,

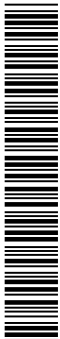
8 “(C) the plan provides, under such form of in-
9 vestment, for investment of such assets under con-
10 straints designed to—

11 “(i) limit the risk associated with the in-
12 vestment portfolio to a reasonable level of risk
13 while seeking to maximize return consistent
14 with that level of risk, or

15 “(ii) minimize risk while seeking a reason-
16 able expected return, and

17 “(D) the expenses associated with the invest-
18 ment meet the standards of paragraph (3).

19 “(3)(A) The expenses associated with an investment
20 meet the standards of this paragraph if they do not exceed
21 reasonable expenses. Such expenses shall not be treated
22 as exceeding reasonable expenses solely because the ex-
23 penses in any year (excluding expenses for acquisition of
24 the investment) exceed the investment returns for that
25 year and cause a reduction in principal.



1 “(B) For purposes of subparagraph (A), the term ‘ex-
2 pense’ means any fee, charge, commission, load, or other
3 cost or expense associated with the investment (including
4 cost of acquisition, establishment, maintenance, surrender,
5 or termination of the investment and any other cost of
6 managing or administering the investment) to the extent
7 borne by participants.

8 “(C) The expenses associated with an individual re-
9 irement plan (as defined in section 7701(a)(37) of the
10 Internal Revenue Code of 1986) shall not be treated as
11 meeting the standards of this paragraph if such expenses
12 exceed the expenses normally charged by the trustee or
13 custodian of a comparable individual retirement plan es-
14 tablished to receive rollover contributions (as defined in
15 section 408(d)(3) of such Code) which are not distribu-
16 tions described in section 401(a)(31)(B) of such Code.

17 “(4) The requirements of paragraph (2)(C) shall be
18 treated as satisfied with respect to investments provided
19 for by a plan to the extent such investments consist of—

20 “(A) a balanced portfolio comprised of both eq-
21 uity investments and either stable value or fixed in-
22 come investments provided by a financial institution
23 (or similar financial entity) that is regulated by the
24 United States or a State in any case in which—



1 “(i) the equity investments are broad-based
2 index funds or, to the extent permitted by the
3 Secretary under regulations, guidelines, or
4 other administrative guidance, actively managed
5 funds that are broadly diversified so as to mini-
6 mize the risk of large losses, and

7 “(ii) the stable value or fixed income
8 investments—

9 “(I) are designed to comprise at least
10 20 percent of the total (measured in terms
11 of fair market value), and

12 “(II) are either diversified to minimize
13 the risk of large losses or are obligations
14 (which may include inflation-protected obli-
15 gations) issued by the United States, or

16 “(B) stable value investments.

17 For purposes of this paragraph, the term ‘stable value in-
18 vestments’ means investments provided by a financial in-
19 stitution regulated by the United States or a State that
20 are designed to preserve principal and provide a reason-
21 able rate of return, whether or not guaranteed, which may
22 include investments designed to maintain a stable dollar
23 value equal to the original value of the investment. The
24 Secretary may prescribe regulations or other administra-
25 tive guidance prescribing the manner in which the require-



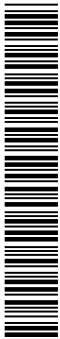
1 ments of paragraph (A)(i) may be applied taking into ac-
2 count classes of investment determined on the basis of in-
3 vestment in large, intermediate, or small capitalization
4 funds, funds of varying styles (such as growth funds or
5 value funds), or funds consisting of, or not consisting of,
6 foreign or international securities.

7 “(5) An investment otherwise described in the pre-
8 ceding provisions of this subsection shall not be treated
9 as failing to be a qualifying automatic investment solely
10 by reason of:

11 “(A) the availability to the participant under
12 the terms of the plan of alternative forms of invest-
13 ment which meet the requirements of subsection
14 (c)(1) or are managed by an independent investment
15 manager;

16 “(B) the extent to which provisions of the plan
17 are or are not directed toward limiting the risk of
18 loss of principal under such investment or promoting
19 long-term capital appreciation;

20 “(C) any change or variation in the percentages
21 of equity and stable value investments included in
22 the investment portfolio or other aspects of the con-
23 stituent investments to the extent such change or
24 variation is based on:



1 “(i) automatic rebalancing or variable in-
2 vestment returns prior to periodic rebalancing,

3 “(ii) the participant’s age, or

4 “(iii) other factors relating to the partici-
5 pant’s situation, such as years until retirement,
6 other retirement plan coverage, financial situa-
7 tion, or investment preferences expressed to the
8 plan by the participant; or

9 “(D) the extent to which such investment con-
10 sists of interests in real estate or real-estate-based
11 investments, if such interests are broadly diversified
12 and do not comprise more than 10 percent of the eq-
13 uity portion of the total investment of plan assets.

14 “(6)(A) Notwithstanding paragraph (1), the require-
15 ments of subsection (a)(1)(C) shall not be treated as satis-
16 fied in connection with any qualifying automatic invest-
17 ment unless such investment (other than the stable value
18 portion thereof) is designed so that no more than 0.5 per-
19 cent of the total fair market value of the assets invested
20 are invested in securities issued by, or interests in the
21 property of, any single person.

22 “(B) For purposes of subparagraph (A), any person
23 and all affiliates thereof shall be treated as a single per-
24 son. A corporation is an affiliate of a person if such cor-
25 poration is a member of any controlled group of corpora-



1 tions (as defined in section 1563(a) of the Internal Rev-
2 enue Code of 1986, except that ‘applicable percentage’
3 shall be substituted for ‘80 percent’ wherever the latter
4 percentage appears in such section) of which person is a
5 member. For purposes of the preceding sentence, the term
6 ‘applicable percentage’ means 50 percent, or such lower
7 percentage as the Secretary may prescribe by regulation.
8 A person other than a corporation shall be treated as an
9 affiliate of any other person to the extent provided in regu-
10 lations of the Secretary. Regulations under this subpara-
11 graph shall be prescribed only after consultation and co-
12 ordination with the Secretary of the Treasury.

13 “(7) The Secretary shall issue regulations or other
14 administrative guidance specifying the manner in which
15 investments under independent professional investment
16 management pursuant to sections 402(c)(3) and 403(a)(2)
17 and other qualifying automatic investments may serve as
18 the default investment arrangement with respect to some
19 or all plan assets without adversely affecting plan compli-
20 ance with this part, as governed by subsection (c)(1) with
21 respect to assets over which participants or beneficiaries
22 exercise control.

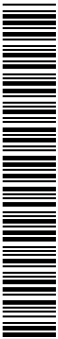
23 “(8)(A) The Secretary may issue regulations or other
24 administrative guidance for compliance with the require-
25 ments of this subsection which are consistent with the pro-



visions of this subsection. Compliance with such regulations or guidance shall be deemed to be compliance with the requirements of this subsection. Such regulations or guidance may express compliance in terms of percentages of assets under management, flat dollar amounts, or other factors.

“(B) The regulations issued pursuant to subparagraph (A) may include procedures for granting conditional or unconditional exemptions of investments, classes of investments, investment managers, or classes of investment managers from all or part of the requirements of this subsection. Such procedures shall be similar to the procedures applicable under section 408(a) and subject to the same standards and limitations as apply under section 408(a). Such exemptions may include, in the case of qualifying automatic investments, relief from, or simplified methods of compliance with, the requirements of subparagraphs (B) and (C) of subsection (a)(1) and the provisions of subsection (c).”.

(b) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to investments made on or after January 1, 2005 (irrespective of the extent to which the Secretary of Labor has issued regulations, guidelines, or other administrative guidance pursu-



1 ant to section 404(e) of the Employee Retirement Income
2 Security Act of 1974 (added by this subsection)).

3 **SEC. 706. PENALTY-FREE WITHDRAWALS FROM RETIRE-**
4 **MENT PLANS FOR INDIVIDUALS CALLED TO**
5 **ACTIVE DUTY FOR AT LEAST 179 DAYS.**

6 (a) IN GENERAL.—Paragraph (2) of section 72(t) of
7 the Internal Revenue Code of 1986 (relating to 10-percent
8 additional tax on early distributions from qualified retire-
9 ment plans) is amended by adding at the end the following
10 new subparagraph:

11 “(G) DISTRIBUTIONS FROM RETIREMENT
12 PLANS TO INDIVIDUALS CALLED TO ACTIVE
13 DUTY.—

14 “(i) IN GENERAL.—Any qualified re-
15 servist distribution.

16 “(ii) AMOUNT DISTRIBUTED MAY BE
17 REPAID.—Any individual who receives a
18 qualified reservist distribution may, at any
19 time during the 2-year period beginning on
20 the day after the end of the active duty pe-
21 riod, make one or more contributions to an
22 individual retirement plan of such indi-
23 vidual in an aggregate amount not to ex-
24 ceed the amount of such distribution. The
25 dollar limitations otherwise applicable to



1 contributions to individual retirement plans
2 shall not apply to any contribution made
3 pursuant to the preceding sentence. No de-
4 duction shall be allowed for any contribu-
5 tion pursuant to this clause.

6 “(iii) QUALIFIED RESERVIST DIS-
7 TRIBUTION.—For purposes of this sub-
8 paragraph, the term ‘qualified reservist
9 distribution’ means any distribution to an
10 individual if—

11 “(I) such distribution is from an
12 individual retirement plan, or from
13 amounts attributable to employer con-
14 tributions made pursuant to elective
15 deferrals described in subparagraph
16 (A) or (C) of section 402(g)(3) or sec-
17 tion 501(c)(18)(D)(iii),

18 “(II) such individual was (by rea-
19 son of being a member of a reserve
20 component (as defined in section 101
21 of title 37, United States Code)), or-
22 dered or called to active duty for a pe-
23 riod in excess of 179 days or for an
24 indefinite period, and



1 “(III) such distribution is made
2 during the period beginning on the
3 date of such order or call and ending
4 at the close of the active duty period.

5 “(iv) APPLICATION OF SUBPARA-
6 GRAPH.—This subparagraph applies to in-
7 dividuals ordered or called to active duty
8 after September 11, 2001, and before Sep-
9 tember 12, 2007. In no event shall the 2-
10 year period referred to in clause (ii) end
11 before the date which is 2 years after the
12 date of the enactment of this subpara-
13 graph.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 401(k)(2)(B)(i) of such Code is
16 amended by striking “or” at the end of subclause
17 (III), by striking “and” at the end of subclause (IV)
18 and inserting “or”, and by inserting after subclause
19 (IV) the following new subclause:

20 “(V) in the case of a qualified re-
21 servist distribution (as defined in sec-
22 tion 72(t)(2)(G)(iii)), the date on
23 which a period referred to in sub-
24 clause (III) of such section begins,
25 and”.



1 (2) Section 403(b)(7)(A)(ii) of such Code is
2 amended by inserting “(unless such amount is a dis-
3 tribution to which section 72(t)(2)(G) applies)” after
4 “distributee”.

5 (3) Section 403(b)(11) of such Code is amend-
6 ed by striking “or” at the end of subparagraph (A),
7 by striking the period at the end of subparagraph
8 (B) and inserting “, or”, and by inserting after sub-
9 paragraph (B) the following new subparagraph:

10 “(C) for distributions to which section
11 72(t)(2)(G) applies.”.

12 (c) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

13 (1) EFFECTIVE DATE.—The amendment made
14 by this section shall apply to distributions after Sep-
15 tember 11, 2001.

16 (2) WAIVER OF LIMITATIONS.—If refund or
17 credit of any overpayment of tax resulting from the
18 amendments made by this section is prevented at
19 any time before the close of the 1-year period begin-
20 ning on the date of the enactment of this Act by the
21 operation of any law or rule of law (including res ju-
22 dicata), such refund or credit may nevertheless be
23 made or allowed if claim therefor is filed before the
24 close of such period.



1 **SEC. 707. WAIVER OF 10 PERCENT EARLY WITHDRAWAL**
2 **PENALTY TAX ON CERTAIN DISTRIBUTIONS**
3 **OF PENSION PLANS FOR PUBLIC SAFETY EM-**
4 **PLOYEES.**

5 (a) IN GENERAL.—Section 72(t)(2) of the Internal
6 Revenue Code of 1986 (relating to subsection not to apply
7 to certain distributions), as amended by section 904, is
8 amended by adding at the end the following new sub-
9 section:

10 “(H) DROP DISTRIBUTIONS TO QUALI-
11 FIED PUBLIC SAFETY EMPLOYEES IN GOVERN-
12 MENTAL PLANS.—

13 “(i) IN GENERAL.—Distributions to
14 an individual who is a qualified public safe-
15 ty employee from a governmental plan
16 within the meaning of section 414(d) to
17 the extent such distributions are attrib-
18 utable to a DROP benefit.

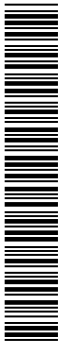
19 “(ii) DEFINITIONS.—For purposes of
20 this subparagraph—

21 “(I) DROP BENEFIT.—The term
22 ‘DROP benefit’ means a feature of a
23 governmental plan which is a defined
24 benefit plan and under which an em-
25 ployee elects to receive credits to an
26 account (including a notional account)



1 in the plan which are not in excess of
2 the plan benefits (payable in the form
3 of an annuity) that would have been
4 provided if the employee had retired
5 under the plan at a specified earlier
6 retirement date and which are in lieu
7 of increases in the employee's accrued
8 pension benefit based on years of
9 service after the effective date of the
10 DROP election.

11 “(II) QUALIFIED PUBLIC SAFETY
12 EMPLOYEE.—The term ‘qualified pub-
13 lic safety employee’ means any em-
14 ployee of any police department or fire
15 department organized and operated by
16 a State or political subdivision of a
17 State if the employee provides police
18 protection, firefighting services, or
19 emergency medical services for any
20 area within the jurisdiction of such
21 State or political subdivision and if
22 the employee was eligible to retire on
23 or before the date of such election and
24 receive immediate retirement bene-
25 fits.”.



1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to distributions after the date of
3 the enactment of this Act.

4 **SEC. 708. COMBAT ZONE COMPENSATION TAKEN INTO AC-**
5 **COUNT FOR PURPOSES OF DETERMINING**
6 **LIMITATION AND DEDUCTIBILITY OF CON-**
7 **TRIBUTIONS TO INDIVIDUAL RETIREMENT**
8 **PLANS.**

9 (a) IN GENERAL.—Subsection (f) of section 219 of
10 the Internal Revenue Code of 1986 is amended by redesignig-
11 nating paragraph (7) as paragraph (8) and by inserting
12 after paragraph (6) the following new paragraph:

13 “(7) SPECIAL RULE FOR COMPENSATION
14 EARNED BY MEMBERS OF THE ARMED FORCES FOR
15 SERVICE IN A COMBAT ZONE.—For purposes of sub-
16 sections (b)(1)(B) and (c), the amount of compensa-
17 tion includible in an individual’s gross income shall
18 be determined without regard to section 112.”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 2005.

22 **SEC. 709. DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL**
23 **RETIREMENT PLANS.**

24 (a) IN GENERAL.—The Secretary of the Treasury (or
25 the Secretary’s delegate) shall make available a form (or



1 modify existing forms) for use by individuals to direct that
2 a portion of any refund of overpayment of tax imposed
3 by chapter 1 of the Internal Revenue Code of 1986 be
4 paid directly to an individual retirement plan (as defined
5 in section 7701(a)(37) of such Code) of such individual.

6 (b) EFFECTIVE DATE.—The form required by sub-
7 section (a) shall be made available for taxable years begin-
8 ning after December 31, 2006.

9 **SEC. 710. ALLOW ROLLOVERS BY NONSPOUSE BENE-**
10 **FICIARIES OF CERTAIN RETIREMENT PLAN**
11 **DISTRIBUTIONS.**

12 (a) IN GENERAL.—

13 (1) QUALIFIED PLANS.—Section 402(c) of the
14 Internal Revenue Code of 1986 (relating to rollovers
15 from exempt trusts) is amended by adding at the
16 end the following new paragraph:

17 “(11) DISTRIBUTIONS TO INHERITED INDIV-
18 VIDUAL RETIREMENT PLAN OF NONSPOUSE BENE-
19 FICIARY.—

20 “(A) IN GENERAL.—If, with respect to any
21 portion of a distribution from an eligible retire-
22 ment plan of a deceased employee, a direct
23 trustee-to-trustee transfer is made to an indi-
24 vidual retirement plan described in clause (i) or
25 (ii) of paragraph (8)(B) established for the pur-



1 poses of receiving the distribution on behalf of
2 an individual who is a designated beneficiary
3 (as defined by section 401(a)(9)(E)) of the em-
4 ployee and who is not the surviving spouse of
5 the employee—

6 “(i) the transfer shall be treated as an
7 eligible rollover distribution for purposes of
8 this subsection,

9 “(ii) the individual retirement plan
10 shall be treated as an inherited individual
11 retirement account or individual retirement
12 annuity (within the meaning of section
13 408(d)(3)(C)) for purposes of this title,
14 and

15 “(iii) section 401(a)(9)(B) (other than
16 clause (iv) thereof) shall apply to such
17 plan.

18 “(B) CERTAIN TRUSTS TREATED AS BENE-
19 FICIARIES.—For purposes of this paragraph, to
20 the extent provided in rules prescribed by the
21 Secretary, a trust maintained for the benefit of
22 one or more designated beneficiaries shall be
23 treated in the same manner as a trust des-
24 ignated beneficiary.”.



1 (2) SECTION 403(a) PLANS.—Subparagraph
2 (B) of section 403(a)(4) of such Code (relating to
3 rollover amounts) is amended by inserting “and
4 (11)” after “(7)”.

5 (3) SECTION 403(b) PLANS.—Subparagraph
6 (B) of section 403(b)(8) of such Code (relating to
7 rollover amounts) is amended by striking “and (9)”
8 and inserting “, (9), and (11)”.

9 (4) SECTION 457 PLANS.—Subparagraph (B) of
10 section 457(e)(16) of such Code (relating to rollover
11 amounts) is amended by striking “and (9)” and in-
12 serting “, (9), and (11)”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to distributions after December 31,
15 2005.

16 **SEC. 711. IRA ELIGIBILITY FOR THE DISABLED.**

17 (a) IN GENERAL.—Subsection (f) of section 219 of
18 the Internal Revenue Code of 1986 (relating to other defi-
19 nitions and special rules) is amended by adding at the end
20 the following:

21 “(8) SPECIAL RULE FOR CERTAIN DISABLED
22 INDIVIDUALS.—In the case of an individual—
23 “(A) who is disabled (within the meaning
24 of section 72(m)(7)), and



1 “(B) who has not attained the applicable
2 age (as defined in section 401(a)(9)(H)) before
3 the close of the taxable year,
4 subparagraph (B) of subsection (b)(1) shall not
5 apply.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to taxable years beginning after
8 December 31, 2005.

9 **TITLE VII—PROVISIONS TO EN-**
10 **HANCE HEALTH CARE AF-**
11 **FORDABILITY**

12 **SEC. 801. TREATMENT OF ANNUITY AND LIFE INSURANCE**
13 **CONTRACTS WITH A LONG-TERM CARE IN-**
14 **SURANCE FEATURE.**

15 (a) EXCLUSION FROM GROSS INCOME.—Subsection
16 (e) of section 72 of the Internal Revenue Code of 1986
17 (relating to amounts not received as annuities) is amended
18 by redesignating paragraph (11) as paragraph (12) and
19 by inserting after paragraph (10) the following new para-
20 graph:

21 “(11) SPECIAL RULES FOR CERTAIN COMBINA-
22 TION CONTRACTS PROVIDING LONG-TERM CARE IN-
23 SURANCE.—Notwithstanding paragraphs (2), (5)(C),
24 and (10), in the case of any charge against the cash
25 value of an annuity contract or the cash surrender



1 value of a life insurance contract made as payment
2 for coverage under a qualified long-term care insur-
3 ance contract which is part of or a rider on such an-
4 nuity or life insurance contract—

5 “(A) the investment in the contract shall
6 be reduced (but not below zero) by such charge,
7 and

8 “(B) such charge shall not be includible in
9 gross income.”.

10 (b) TAX-FREE EXCHANGES AMONG CERTAIN INSUR-
11 ANCE POLICIES.—

12 (1) ANNUITY CONTRACTS CAN INCLUDE QUALI-
13 FIED LONG-TERM CARE INSURANCE RIDERS.—Para-
14 graph (2) of section 1035(b) of such Code is amend-
15 ed by adding at the end the following new sentence:
16 “For purposes of the preceding sentence, a contract
17 shall not fail to be treated as an annuity contract
18 solely because a qualified long-term care insurance
19 contract is a part of or a rider on such contract.”.

20 (2) LIFE INSURANCE CONTRACTS CAN INCLUDE
21 QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—
22 Paragraph (3) of section 1035(b) of such Code is
23 amended by adding at the end the following new
24 sentence: “For purposes of the preceding sentence,
25 a contract shall not fail to be treated as a life insur-



1 ance contract solely because a qualified long-term
2 care insurance contract is a part of or a rider on
3 such contract.”.

4 (3) EXPANSION OF TAX-FREE EXCHANGES OF
5 LIFE INSURANCE, ENDOWMENT, AND ANNUITY CON-
6 TRACTS FOR LONG-TERM CARE CONTRACTS.—Sub-
7 section (a) of section 1035 of such Code (relating to
8 certain exchanges of insurance policies) is
9 amended—

10 (A) in paragraph (1) by striking “con-
11 tract;” and inserting “contract or for a quali-
12 fied long-term care insurance contract;”,

13 (B) in paragraph (2) by striking “con-
14 tract;” and inserting “contract, or (C) for a
15 qualified long-term care insurance contract;”,
16 and

17 (C) in paragraph (3) by striking “con-
18 tract.” and inserting “contract or for a quali-
19 fied long-term care insurance contract.”.

20 (4) TAX-FREE EXCHANGES OF QUALIFIED
21 LONG-TERM CARE INSURANCE CONTRACT.—Sub-
22 section (a) of section 1035 of such Code (relating to
23 certain exchanges of insurance policies) is amended
24 by striking “or” at the end of paragraph (2), by
25 striking the period at the end of paragraph (3) and



1 inserting “; or”, and by inserting after paragraph
2 (3) the following new paragraph:

3 “(4) a qualified long-term care insurance con-
4 tract for a qualified long-term care insurance con-
5 tract.”.

6 (c) TREATMENT OF COVERAGE PROVIDED AS PART
7 OF A LIFE INSURANCE OR ANNUITY CONTRACT.—Sub-
8 section (e) of section 7702B of such Code (relating to
9 treatment of qualified long-term care insurance) is amend-
10 ed to read as follows:

11 “(e) TREATMENT OF COVERAGE PROVIDED AS PART
12 OF A LIFE INSURANCE OR ANNUITY CONTRACT.—

13 “(1) COVERAGE TREATED AS CONTRACT.—Ex-
14 cept as otherwise provided in regulations prescribed
15 by the Secretary, in the case of any long-term care
16 insurance coverage (whether or not qualified) pro-
17 vided by a rider on or as part of a life insurance
18 contract or an annuity contract, this title shall apply
19 as if the portion of the contract providing such cov-
20 erage is a separate contract.

21 “(2) DENIAL OF DEDUCTION UNDER SECTION
22 213.—No deduction shall be allowed under section
23 213(a) for any payment made for coverage under a
24 qualified long-term care insurance contract if such
25 payment is made as a charge against the cash value



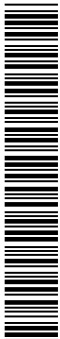
1 of an annuity contract or the cash surrender value
2 of a life insurance contract.

3 “(3) APPLICATION OF SECTION 7702.—Section
4 7702(c)(2) (relating to the guideline premium limi-
5 tation) shall be applied by increasing the guideline
6 premium limitation with respect to the life insurance
7 contract, as of any date—

8 “(A) by the sum of any charges (but not
9 premium payments) against the life insurance
10 contract’s cash surrender value (within the
11 meaning of section 7702(f)(2)(A)) for coverage
12 under the qualified long-term care insurance
13 contract made to that date under the life insur-
14 ance contract, less

15 “(B) any such charges the imposition of
16 which reduces the premiums paid for the life in-
17 surance contract (within the meaning of section
18 7702(f)(1)).

19 “(4) PORTION DEFINED.—For purposes of this
20 subsection, the term ‘portion’ means only the terms
21 and benefits under a life insurance contract or annu-
22 ity contract that are in addition to the terms and
23 benefits under the contract without regard to long-
24 term care insurance coverage.



1 “(5) ANNUITY CONTRACTS TO WHICH PARA-
2 GRAPH (1) DOES NOT APPLY.—For purposes of this
3 subsection, none of the following shall be treated as
4 an annuity contract:

5 “(A) A trust described in section 401(a)
6 which is exempt from tax under section 501(a).

7 “(B) A contract—

8 “(i) purchased by a trust described in
9 subparagraph (A),

10 “(ii) purchased as part of a plan de-
11 scribed in section 403(a),

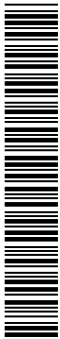
12 “(iii) described in section 403(b),

13 “(iv) provided for employees of a life
14 insurance company under a plan described
15 in section 818(a)(3), or

16 “(v) from an individual retirement ac-
17 count or an individual retirement annuity.

18 “(C) A contract purchased by an employer
19 for the benefit of the employee (or the employ-
20 ee’s spouse).

21 Any dividend described in section 404(k) which is
22 received by a participant or beneficiary shall, for
23 purposes of this paragraph, be treated as paid under
24 a separate contract to which subparagraph (B)(i)
25 applies.”.



1 (d) INFORMATION REPORTING.—

2 (1) Subpart B of part III of subchapter A of
3 chapter 61 of such Code (relating to information
4 concerning transactions with other persons) is
5 amended by adding at the end the following new sec-
6 tion:

7 **“SEC. 6050U. CHARGES OR PAYMENTS FOR QUALIFIED**
8 **LONG-TERM CARE INSURANCE CONTRACTS**
9 **UNDER COMBINED ARRANGEMENTS.**

10 “(a) REQUIREMENT OF REPORTING.—Any person
11 who makes a charge against the cash value of an annuity
12 contract, or the cash surrender value of a life insurance
13 contract, which is excludible from gross income under sec-
14 tion 72(e)(11) shall make a return, according to the forms
15 or regulations prescribed by the Secretary, setting forth—

16 “(1) the amount of the aggregate of such
17 charges against each such contract for the calendar
18 year,

19 “(2) the amount of the reduction in the invest-
20 ment in each such contract by reason of such
21 charges, and

22 “(3) the name, address, and TIN of the indi-
23 vidual who is the holder of each such contract.

24 “(b) STATEMENTS TO BE FURNISHED TO PERSONS
25 WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—



1 Every person required to make a return under subsection
2 (a) shall furnish to each individual whose name is required
3 to be set forth in such return a written statement
4 showing—

5 “(1) the name, address, and phone number of
6 the information contact of the person making the
7 payments, and

8 “(2) the information required to be shown on
9 the return with respect to such individual.

10 The written statement required under the preceding sen-
11 tence shall be furnished to the individual on or before Jan-
12 uary 31 of the year following the calendar year for which
13 the return under subsection (a) was required to be made.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-
15 tions for subpart B of part III of subchapter A of
16 such chapter 61 of such Code is amended by adding
17 at the end the following new item:

“Sec. 6050U. Charges or payments for qualified long-term care insurance con-
tracts under combined arrangements.”.

18 (e) TREATMENT OF POLICY ACQUISITION EX-
19 PENSES.—Subsection (e) of section 848 of such Code (re-
20 lating to classification of contracts) is amended by adding
21 at the end the following new paragraph:

22 “(6) TREATMENT OF CERTAIN QUALIFIED
23 LONG-TERM CARE INSURANCE CONTRACT ARRANGE-
24 MENTS.—An annuity or life insurance contract



1 which includes a qualified long-term care insurance
2 contract as a part of or a rider on such annuity or
3 life insurance contract shall be treated as a specified
4 insurance contract not described in subparagraph
5 (A) or (B) of subsection (c)(1).”.

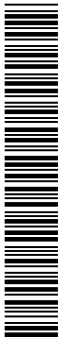
6 (f) TREATMENT AS QUALIFIED ADDITIONAL BEN-
7 EFIT.—Subparagraph (A) of section 7702(f)(5) of such
8 Code (relating to qualified additional benefits) is amended
9 by striking “or” at the end of clause (iv), by redesignating
10 clause (v) as clause (vi), and by inserting after clause (iv)
11 the following new clause:

12 “(v) qualified long-term care insur-
13 ance contract which is a part of or a rider
14 on the contract, or”.

15 (g) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided by para-
17 graph (2), the amendments made by this section
18 shall apply to contracts issued before, on, or after
19 December 31, 2006, but only with respect to periods
20 beginning after such date.

21 (2) SUBSECTION (b).—The amendments made
22 by subsection (b) shall apply with respect to ex-
23 changes occurring after December 31, 2006.



1 **SEC. 802. DISPOSITION OF UNUSED HEALTH BENEFITS IN**
2 **CAFETERIA PLANS AND FLEXIBLE SPENDING**
3 **ARRANGEMENTS.**

4 (a) IN GENERAL.—Section 125 of the Internal Rev-
5 enue Code of 1986 (relating to cafeteria plans) is amended
6 by redesignating subsections (h) and (i) as subsections (i)
7 and (j), respectively, and by inserting after subsection (g)
8 the following:

9 “(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH
10 BENEFITS.—

11 “(1) IN GENERAL.—For purposes of this title,
12 a plan or other arrangement shall not fail to be
13 treated as a cafeteria plan solely because qualified
14 benefits under such plan include a health flexible
15 spending arrangement under which not more than
16 \$500 of unused health benefits may be—

17 “(A) carried forward to the succeeding
18 plan year of such health flexible spending ar-
19 rangement, or

20 “(B) to the extent permitted by section
21 106(d), contributed by the employer to a health
22 savings account (as defined in section 223(d))
23 maintained for the benefit of the employee.

24 “(2) HEALTH FLEXIBLE SPENDING ARRANGE-
25 MENT.—For purposes of this subsection, the term
26 ‘health flexible spending arrangement’ means a flexi-



1 ble spending arrangement (as defined in section
2 106(c)) that is a qualified benefit and only permits
3 reimbursement for expenses for medical care (as de-
4 fined in section 213(d)(1), without regard to sub-
5 paragraphs (C) and (D) thereof).

6 “(3) UNUSED HEALTH BENEFITS.—For pur-
7 poses of this subsection, with respect to an em-
8 ployee, the term ‘unused health benefits’ means the
9 excess of—

10 “(A) the maximum amount of reimburse-
11 ment allowable to the employee for a plan year
12 under a health flexible spending arrangement,
13 over

14 “(B) the actual amount of reimbursement
15 for such year under such arrangement.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 subsection (a) shall apply to taxable years beginning after
18 December 31, 2005.

19 **SEC. 803. DISTRIBUTIONS FROM GOVERNMENTAL RETIRE-**
20 **MENT PLANS FOR HEALTH AND LONG-TERM**
21 **CARE INSURANCE FOR PUBLIC SAFETY OFFI-**
22 **CERS.**

23 (a) IN GENERAL.—Section 402 of the Internal Rev-
24 enue Code of 1986 (relating to taxability of beneficiary



1 of employees' trust) is amended by adding at the end the
2 following new subsection:

3 “(1) DISTRIBUTIONS FROM GOVERNMENTAL PLANS
4 FOR HEALTH AND LONG-TERM CARE INSURANCE.—

5 “(1) IN GENERAL.—In the case of an employee
6 who is an eligible retired public safety officer who
7 makes the election described in paragraph (6) with
8 respect to any taxable year of such employee, gross
9 income of such employee for such taxable year does
10 not include any distribution from an eligible retire-
11 ment plan to the extent that the aggregate amount
12 of such distributions does not exceed the amount
13 paid by such employee for qualified health insurance
14 premiums of the employee, his spouse, or dependents
15 (as defined in section 152) for such taxable year.

16 “(2) LIMITATION.—The amount which may be
17 excluded from gross income for the taxable year by
18 reason of paragraph (1) shall not exceed \$5,000.

19 “(3) DISTRIBUTIONS MUST OTHERWISE BE IN-
20 CLUDIBLE.—

21 “(A) IN GENERAL.—An amount shall be
22 treated as a distribution for purposes of para-
23 graph (1) only to the extent that such amount
24 would be includible in gross income without re-
25 gard to paragraph (1).



1 “(B) APPLICATION OF SECTION 72.—Not-
2 withstanding section 72, in determining the ex-
3 tent to which an amount is treated as a dis-
4 tribution for purposes of subparagraph (A), the
5 aggregate amounts distributed from an eligible
6 retirement plan in a taxable year (up to the
7 amount excluded under paragraph (1)) shall be
8 treated as includible in gross income (without
9 regard to subparagraph (A)) to the extent that
10 such amount does not exceed the aggregate
11 amount which would have been so includible if
12 all amounts distributed from all eligible retire-
13 ment plans were treated as 1 contract for pur-
14 poses of determining the inclusion of such dis-
15 tribution under section 72. Proper adjustments
16 shall be made in applying section 72 to other
17 distributions in such taxable year and subse-
18 quent taxable years.

19 “(4) DEFINITIONS.—For purposes of this
20 subsection—

21 “(A) ELIGIBLE RETIREMENT PLAN.—For
22 purposes of paragraph (1), the term ‘eligible re-
23 tirement plan’ means a governmental plan
24 (within the meaning of section 414(d)) which is



1 described in clause (iii), (iv), (v), or (vi) of sub-
2 section (c)(8)(B).

3 “(B) ELIGIBLE RETIRED PUBLIC SAFETY
4 OFFICER.—The term ‘eligible retired public
5 safety officer’ means an individual who, by rea-
6 son of disability or attainment of normal retire-
7 ment age, is separated from service as a public
8 safety officer with the employer who maintains
9 the eligible retirement plan from which distribu-
10 tions subject to paragraph (1) are made.

11 “(C) PUBLIC SAFETY OFFICER.—The term
12 ‘public safety officer’ shall have the same mean-
13 ing given such term by section 1204(8)(A) of
14 the Omnibus Crime Control and Safe Streets
15 Act of 1968 (42 U.S.C. 3796b(8)(A)).

16 “(D) QUALIFIED HEALTH INSURANCE
17 PREMIUMS.—The term ‘qualified health insur-
18 ance premiums’ means premiums for coverage
19 for the eligible retired public safety officer, his
20 spouse, and dependents, by an accident or
21 health insurance plan or qualified long-term
22 care insurance contract (as defined in section
23 7702B(b)).

24 “(5) SPECIAL RULES.—For purposes of this
25 subsection—



1 “(A) DIRECT PAYMENT TO INSURER RE-
2 QUIRED.—Paragraph (1) shall only apply to a
3 distribution if payment of the premiums is
4 made directly to the provider of the accident or
5 health insurance plan or qualified long-term
6 care insurance contract by deduction from a
7 distribution from the eligible retirement plan.

8 “(B) RELATED PLANS TREATED AS 1.—All
9 eligible retirement plans of an employer shall be
10 treated as a single plan.

11 “(6) ELECTION DESCRIBED.—

12 “(A) IN GENERAL.—For purposes of para-
13 graph (1), an election is described in this para-
14 graph if the election is made by an employee
15 after separation from service with respect to
16 amounts not distributed from an eligible retire-
17 ment plan to have amounts from such plan dis-
18 tributed in order to pay for qualified health in-
19 surance premiums.

20 “(B) SPECIAL RULE.—A plan shall not be
21 treated as violating the requirements of section
22 401, or as engaging in a prohibited transaction
23 for purposes of section 503(b), merely because
24 it provides for an election with respect to
25 amounts that are otherwise distributable under



1 the plan or merely because of a distribution
2 made pursuant to an election described in sub-
3 paragraph (A).

4 “(7) COORDINATION WITH MEDICAL EXPENSE
5 DEDUCTION.—The amounts excluded from gross in-
6 come under paragraph (1) shall not be taken into
7 account under section 213.

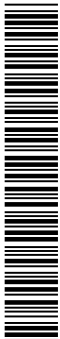
8 “(8) COORDINATION WITH DEDUCTION FOR
9 HEALTH INSURANCE COSTS OF SELF-EMPLOYED IN-
10 DIVIDUALS.—The amounts excluded from gross in-
11 come under paragraph (1) shall not be taken into
12 account under section 162(l).”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 403(a) of such Code (relating to
15 taxability of beneficiary under a qualified annuity
16 plan) is amended by inserting after paragraph (1)
17 the following new paragraph:

18 “(2) SPECIAL RULE FOR HEALTH AND LONG-
19 TERM CARE INSURANCE.—To the extent provided in
20 section 402(l), paragraph (1) shall not apply to the
21 amount distributed under the contract which is oth-
22 erwise includible in gross income under this sub-
23 section.”.

24 (2) Section 403(b) of such Code (relating to
25 taxability of beneficiary under annuity purchased by



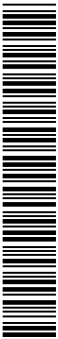
1 section 501(c)(3) organization or public school) is
2 amended by inserting after paragraph (1) the fol-
3 lowing new paragraph:

4 “(2) SPECIAL RULE FOR HEALTH AND LONG-
5 TERM CARE INSURANCE.—To the extent provided in
6 section 402(l), paragraph (1) shall not apply to the
7 amount distributed under the contract which is oth-
8 erwise includible in gross income under this sub-
9 section.”.

10 (3) Section 457(a) of such Code (relating to
11 year of inclusion in gross income) is amended by
12 adding at the end the following new paragraph:

13 “(3) SPECIAL RULE FOR HEALTH AND LONG-
14 TERM CARE INSURANCE.—In the case of a plan of
15 an eligible employer described in subsection
16 (e)(1)(A), to the extent provided in section 402(l),
17 paragraph (1) shall not apply to amounts otherwise
18 includible in gross income under this subsection.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to distributions in taxable years
21 beginning after December 31, 2005.



1 **TITLE VIII—REDUCTION IN BEN-**
2 **EFIT OF RATE REDUCTION**
3 **FOR FAMILIES WITH IN-**
4 **COMES OVER \$1,000,000**

5 **SEC. 901. REDUCTION IN BENEFIT OF RATE REDUCTION**
6 **FOR FAMILIES WITH INCOMES OVER**
7 **\$1,000,000.**

8 (a) GENERAL RULE.—Section 1 of the Internal Rev-
9 enue Code of 1986 (relating to imposition of tax on indi-
10 viduals) is amended by adding at the end the following
11 new subsection:

12 “(j) REDUCTION IN BENEFIT OF RATE REDUCTION
13 FOR FAMILIES WITH INCOMES OVER \$1,000,000.—

14 “(1) IN GENERAL.—If the adjusted gross in-
15 come of a taxpayer exceeds the threshold amount,
16 the tax imposed by this section (determined without
17 regard to this subsection) shall be increased by an
18 amount equal to 1.8 percent of so much of the ad-
19 justed gross income as exceeds the threshold
20 amount.

21 “(2) THRESHOLD AMOUNTS.—For purposes of
22 this subsection, the term ‘threshold amount’
23 means—

24 “(A) \$1,000,000 in the case of a joint re-
25 turn, and



1 “(B) \$500,000 in the case of any other re-
2 turn.

3 “(3) TAX NOT TO APPLY TO ESTATES AND
4 TRUSTS.—This subsection shall not apply to an es-
5 tate or trust.

6 “(4) SPECIAL RULE.—For purposes of section
7 55, the amount of the regular tax shall be deter-
8 mined without regard to this subsection.

9 “(5) TERMINATION.—This subsection shall not
10 apply to taxable years beginning after December 31,
11 2010.”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2005.

15 (c) SECTION 15 NOT TO APPLY.—The amendment
16 made by subsection (a) shall not be treated as a change
17 in a rate of tax for purposes of section 15 of the Internal
18 Revenue Code of 1986.

